

Main Volume
Administrative Legislation

ATLANTIC HIGHLANDS CODE

Chapter 1

GENERAL PROVISIONS

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Adoption of Code**[Adopted 2-23-2011 by Ord. No. 03-2011]****§ 1-1. Adoption of Code.**

Pursuant to N.J.S.A. 40:49-4, the ordinances of the Borough of Atlantic Highlands of a general and permanent nature adopted by the Borough Council of the Borough of Atlantic Highlands, as revised, codified and consolidated into chapters and sections by General Code, and consisting of Chapters 1 through 353, together with an Appendix, are hereby approved, adopted, ordained and enacted as the "Code of the Borough of Atlantic Highlands," hereinafter known and referred to as the "Code."

§ 1-2. Code supersedes prior ordinances.

This ordinance and the Code shall supersede all other general and permanent ordinances enacted prior to the enactment of this Code, except such ordinances as are hereinafter expressly saved from repeal or continued in force.

§ 1-3. When effective.

This ordinance shall take effect immediately upon passage and publication according to law.

§ 1-4. Copy of Code on file.

A copy of the Code in loose-leaf form has been filed in the office of the Municipal Clerk and shall remain there for use and examination by the public until final action is taken on this ordinance; and, if this ordinance shall be adopted, such copy shall be certified to by the Clerk of the Borough of Atlantic Highlands by impressing thereon the Seal of the Borough, as provided by law, and such certified copy shall remain on file in the office of the Clerk of the Borough, to be made available to persons desiring to examine the same during all times while said Code is in effect.

§ 1-5. Amendments to Code.

Any and all additions, amendments or supplements to the Code, when passed and adopted in such form as to indicate the intent of the governing body to make them a part thereof, shall be deemed to be incorporated into such Code so that reference to the "Code of the Borough of Atlantic Highlands" shall be understood and intended to include such additions and amendments. Whenever such additions, amendments or supplements to the Code shall be adopted, they shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf book containing said Code as amendments and supplements thereto.

§ 1-6. Publication; filing.

The Clerk of the Borough of Atlantic Highlands, pursuant to law, shall cause this Adopting Ordinance to be published, in the manner required, in a newspaper of general circulation in the Borough. Sufficient copies of the Code shall be maintained in the office of the Clerk for inspection by the public at all times during regular office hours. The enactment and publication of this Adopting Ordinance, coupled with availability of copies of the Code for inspection by the public, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

§ 1-7. Code book to be kept up-to-date.

It shall be the duty of the Clerk or someone authorized and directed by the Clerk to keep up-to-date the certified copy of the book containing the Code required to be filed in his or her office for the use of the public. All changes in said Code and all ordinances adopted subsequent to the effective date of this codification which shall be adopted specifically as part of the Code shall, when finally adopted, be included therein by reference until such changes or new ordinances are printed as supplements to said Code book, at which time such supplements shall be inserted therein.

§ 1-8. Sale of Code book.

Copies of the Code, or any chapter or portion of it, may be purchased from the Clerk, or an authorized agent of the Clerk, upon the payment of a fee authorized by the Borough. The Clerk shall also arrange for procedures for the periodic supplementation of the Code.

§ 1-9. Altering or tampering with Code; penalties for violation.

It shall be unlawful for anyone to improperly change or amend, by additions or deletions, any part or portion of the Code or to alter or tamper with such Code in any manner whatsoever which will cause the law of the Borough of Atlantic Highlands to be misrepresented thereby. Anyone violating this section or any part of this ordinance shall be subject, upon conviction, to one or more of the following: a fine of not more than \$1,250, imprisonment for not more than 90 days or a period of community service not exceeding 90 days, in the discretion of the Judge imposing the same.

§ 1-10. Severability of Code provisions.

Each section of the Code and every part of each section is an independent section or part of a section, and the holding of any section or a part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof.

§ 1-11. Severability of ordinance provisions.

Each section of this ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof.

§ 1-12. Inconsistent ordinances repealed.

Except as provided in § 1-13, Ordinances saved from repeal, below, all ordinances or parts of ordinances inconsistent with the provisions contained in the Code adopted by this ordinance are hereby repealed; provided, however, that such repeal shall only be to the extent of such inconsistency, and any valid legislation of the Borough of Atlantic Highlands which is not in conflict with the provisions of the Code shall be deemed to remain in full force and effect.

§ 1-13. Ordinances saved from repeal.

The adoption of this Code and the repeal of ordinances provided for in § 1-12 of this ordinance shall not affect the following ordinances, rights and obligations, which are hereby expressly saved from repeal:

- A. Any ordinance adopted subsequent to 7-31-2010.
- B. Any right or liability established, accrued or incurred under any legislative provision prior to the

effective date of this ordinance or any action or proceeding brought for the enforcement of such right or liability.

- C. Any offense or act committed or done before the effective date of this ordinance in violation of any legislative provision or any penalty, punishment or forfeiture which may result therefrom.
- D. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered, prior to the effective date of this ordinance, brought pursuant to any legislative provision.
- E. Any franchise, license, right, easement or privilege heretofore granted or conferred.
- F. Any ordinance providing for the laying out, opening, altering, widening, relocating, straightening, establishing of grade, changing of name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, park or other public place or any portion thereof.
- G. Any ordinance or resolution appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond or other instruments or evidence of the Borough's indebtedness.
- H. Ordinances authorizing the purchase, sale, lease or transfer of property or any lawful contract, agreement or obligation.
- I. The levy or imposition of taxes, assessments or charges or the approval of the municipal budget.
- J. The dedication of property or approval of preliminary or final subdivision plats.
- K. All currently effective ordinances pertaining to the rate and manner of payment of salaries and compensation of officers and employees.
- L. Any ordinance adopting or amending the Zoning Map.
- M. Any ordinance relating to or establishing a pension plan or pension fund for municipal employees.

§ 1-14. Changes in previously adopted ordinances.

- A. In compiling and preparing the ordinances for adoption and revision as part of the Code pursuant to N.J.S.A. 40:49-4, certain grammatical changes and other minor changes were made in one or more of said ordinances. It is the intention of the Borough Council that all such changes be adopted as part of the Code as if the ordinances so changed had been previously formally amended to read as such.
- B. In addition, the changes, amendments or revisions as set forth in Schedule A attached hereto and made a part hereof are made herewith, to become effective upon the effective date of this ordinance. (Chapter and section number references are to the ordinances as they have been renumbered and appear in the Code.)¹
- C. The following nomenclature changes are executed in the Code:
 - (1) "State Department of Health" is changed to "State Department of Health and Senior Services."

1. Editor's Note: In accordance with § 1-14B, the chapters, parts and sections which were added, amended, adopted or deleted by this ordinance are indicated throughout the Code by a footnote referring to Chapter 1, General Provisions, Article I. During routine supplementation, footnotes indicating amendments, additions or deletions will be replaced with the following history: "Amended (added, deleted) 2-23-2011 by Ord. No. 03-2011." Schedule A, which contains a complete description of all changes, is on file in the Borough offices.

- (2) "Magistrate" is changed to "Judge."
 - (3) "Municipal Clerk" is changed to "Municipal Clerk."
- D. Ratification of provisions included in the 1966 Code. The following chapters/articles were included in the codification published in 1966. In order to formally accept any substantive revisions that may have been incorporated at the time of the 1966 codification, the Mayor and Council hereby accepts and ratifies the following provisions, as subsequently amended:

Ch. 4, Alcoholic Beverages

Art. I, Sale and License Fees (See now Ch. 85, Art. I)

Art. III, Registration of Licensees and Employees of Licensees (See now Ch. 85, Art. II)

Ch. 25, Brush, Weeds and Hedges

Art. I, Brush, Plant Life, Etc., Abutting Roadways (See now Ch. 265, Art. I)

Art. II, Removal of Brush and Other Debris from Lands (See now Ch. 265, Art. II)

Ch. 27, Buildings - Occupancy Regulations

Art. I, Buildings Unfit for Human Habitation (See now Ch. 200, Art. I)

Art. II, Building Registration and Regulations (See now Ch. 272)

Ch. 46, Excavations (See now Ch. 163, Art. I)

Ch. 50, Firemen, Auxiliary (See now Ch. 28)

Ch. 51, Fire Department (See now Ch. 24)

Ch. 58, Harbor Use

Art. I, Rules and Regulations (See now Ch. 196, Art. I)

Ch. 59, Housing Code (See now Ch. 200)

Ch. 72, Licensed Occupations

Art. II, Signs and Advertisements (See now Ch. 211, Art. I)

Ch. 79, Municipal Court (See now Ch. 15)

Ch. 98, Public Health Nuisance Code (Board of Health) (See now Ch. 235)

Ch. 100, Rent Control (See now Ch. 277)

Ch. 112, Snow and Ice (See now Ch. 317, Art. I)

Ch. 130, Taxicabs (See now Ch. 327)

ARTICLE II

General Penalty

[Adopted 2-8-2006 by Ord. No. 03-2006]

§ 1-15. Violations and penalties.

For violation of any provision of this Code or other ordinances of the Borough of Atlantic Highlands, unless a specific penalty is otherwise provided in connection with the provision violated, the maximum penalty upon conviction of the violation shall be by one or more of the following: imprisonment in the County Jail or in a place provided by the municipality for the detention of prisoners, for any term not exceeding 90 days; or by a fine not exceeding \$2,000; or by a period of community service not exceeding 90 days.

BOARDS, COMMITTEES AND COMMISSIONS

Chapter 5

BOARDS, COMMITTEES AND COMMISSIONS

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Harbor use — See Ch. 196.

Special events — See Ch. 303.

ARTICLE I

Harbor Commission**[Adopted 5-8-1973 by Ord. No. 638]****§ 5-1. Harbor Commission created.**

A local harbor and waterfront commission, to be known as the "Harbor Commission of Atlantic Highlands, New Jersey," be and the same is hereby created.

§ 5-2. Members.

The Commission shall consist of seven persons, residents of the Borough of Atlantic Highlands, to be appointed by the governing body.

§ 5-3. Terms of office.

- A. No fewer than two members of said Commission shall be members of the governing body, two of whom shall be appointed annually, and the remaining five members shall be appointed for the following terms:
- (1) One member for the term of five years.
 - (2) One member for the term of four years.
 - (3) One member for the term of three years.
 - (4) One member for the term of two years.
 - (5) One member for the term of one year.
- B. Thereafter, all appointments, except the members of the governing body, who shall be appointed for the period of one year, shall be for the term of five years each, and the members shall serve until their successors are appointed and qualified.

§ 5-4. Organization; meetings; duties of Chief Financial Officer/Treasurer, and Client Services Representative; expiration of terms. [Amended 11-28-1978 by Ord. No. 739; 2-27-1990 by Ord. No. 960-90; 1-25-2012 by Ord. No. 01-2012]

- A. The Commission shall organize annually on the first Wednesday after the Council reorganization meeting in January. The Commission shall have monthly meetings and such other meetings as may be determined by said Commission. The Chairman, Vice Chairman, Secretary, Chief Financial Officer/Treasurer, and Client Services Representative of the Commission shall be elected by the members of the Commission at its organization meeting each year.
- B. The Client Services Representative shall receive all moneys payable to the Harbor Commission and deposit them in an account or accounts in the name of the Harbor Commission of Atlantic Highlands and shall make monthly reports to the governing body of receipts and disbursements showing the balances on hand. All disbursements shall be made only by the presentation of proper vouchers therefor and upon the checks authorized by the Commission, signed by the Chairman (or, in the Chairman's absence, the Vice-Chairman) and by the Chief Financial Officer/Treasurer (or, in the Chief Financial Officer/Treasurer's absence, the Client Services Representative).

§ 5-5. Service without compensation.

The members of the Harbor Commission shall serve without compensation.

§ 5-6. Expenditures. [Amended 12-14-1982 by Ord. No. 801; 2-19-1992 by Ord. No. 14-92]

The Commission shall be vested with the powers and duties defined and designated in § 5-7 of this article, but where the exercise of such powers or duties shall involve an expenditure, lease or transfer of property exceeding \$2,500 in value, such action shall require the approval, by resolution, of the governing body of the Borough of Atlantic Highlands.

§ 5-7. Powers and duties.

A. The powers and duties vested in said Commission be and the same are hereby defined and designated as follows:

- (1) With prior approval of the governing body, act on matters relating to the construction, erection, improvement, alteration and extension of any of the facilities, structures and property.
- (2) Provide for the maintenance, operation, use, management, regulation, control and supervision of wharves, piers, bulkheads, breakwaters, jetties, docks, slips, basins, docking facilities, beaches, harbors and harbor structures on the waterfront and property owned or leased by the Borough of Atlantic Highlands; regulate, fix, establish bulkhead and pierhead lines and the distances between piers on said waterfront, subject to the regulations of the United States and of this state, and make or cause to be made soundings, surveys and plans therefor and to keep records thereof.
- (3) Adopt and promulgate rules and regulations for the use of the harbor, waterfront, beach, land and all properties, structures, piers, bulkheads, breakwaters and jetties located upon lands owned or leased by the Borough.
- (4) Regulate the service and fix the rates to be charged for wharfage, dockage and the use of all facilities within said harbor, waterfront, beach and property located upon said land owned or leased by the Borough.
- (5) Engage such employees as it may deem necessary. Salaries shall be in accordance with the rates in the Salary Ordinance adopted annually by the governing body.
- (6) Subject to the approval, by resolution, of the governing body of the Borough of Atlantic Highlands and notwithstanding the requirements of section 14 of P.L. 1971, c. 199 (C. 40A:12-14), Public Lands and Buildings Law, the Commission may lease without public bidding, at such prices and upon such terms as it deems reasonable, any real or riparian property and the improvements thereon under its management, operation and control for a term not to exceed 20 years.² **[Amended 2-19-1992 by Ord. No. 14-92]**
- (7) Raise, recover, tow, remove, store, destroy, and dispose of vessels that have been abandoned in the harbor or waterfront, as appropriate, pursuant to the procedures applicable to municipal waterways in the Abandoned or Sunken Vessels Disposition Law (N.J.S.A. 12:7C-7 et seq.). A vessel that has been abandoned at a public or private boat dock, pier, or marina is considered abandoned in the harbor or waterfront.³

2. Editor's Note: N.J.S.A. 40A:12-14 requires public bidding to lease publicly owned lands. See P.L. 1991, c.374 (N.J.S.A. 40:68-24) for municipal power to adopt this provision.

- B. The authority granted to the Harbor Commission by this article shall extend to and include all property owned or leased by the Borough lying within the breakwater as presently located and all shore or other facilities used in conjunction with the operation of said harbor, but shall not extend to any other properties owned or issued by the Borough of Atlantic Highlands.

ARTICLE II

Fireman's Field House Recreation Center Committee
[Adopted 12-12-1989 by Ord. No. 954-89]**§ 5-8. Name.**

There is hereby established the Atlantic Highlands Fireman's Field House Recreation Center Committee.

§ 5-9. Purposes.⁴

The purposes of this article are as follows:

- A. To establish the Fireman's Field House (located at Avenue C and West Washington Avenue), presently leased by the Borough of Atlantic Highlands, as a facility which can be used for recreation and other activities by the youth, residents, and taxpayers of Atlantic Highlands and other groups.
- B. To determine and obtain the repairs, improvements and maintenance necessary to maintain the Fireman's Field House as a functional recreational center.
- C. To determine the recreation and other activities which will be permitted and/or available at the Fireman's Field House and to advise the citizens of Atlantic Highlands and others of these activities.
- D. To establish the rules and regulations for the use of the Fireman's Field House, subject to the approval of the Mayor and Council of Atlantic Highlands.
- E. To approve or reject requests for use of the Fireman's Field House.
- F. To make and amend bylaws for the operation of the Committee, subject to the approval of the Mayor and Council of Atlantic Highlands.

§ 5-10. Membership; quorum.⁵

The Atlantic Highlands Fireman's Field House Recreation Center Committee shall consist of 11 persons, each of whom shall be nominated by the Mayor and approved by the Council. Two members shall also be members of the Atlantic Highlands Fire Department. One member, whose term shall be for one year, shall be a member of the Council. All other members shall have a term of three years. Six members are required for a quorum for taking action.

§ 5-11. Officers.

The members of the Committee shall annually elect from their members the following officers with the following duties:

- A. Chairperson. The duties of the Chairperson will be to preside over all meetings of the Committee and of the Executive Board, and to appoint subcommittees as needed.
- B. Vice-Chairperson. The duties of the Vice-Chairperson will be to perform the duties of the Chairperson in case of absence or vacancy.
- C. Secretary. The duties of the Secretary will be to keep minutes of all meetings, and at each meeting to

4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

5. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

make a report of the previous meeting.

§ 5-12. Fees.⁶

Fees shall be as provided in § 168-2.

6. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE III
Planning Board
[Adopted 4-12-1995 by Ord. No. 5-95]

§ 5-13. Exercise of authority of Board of Adjustment.

Pursuant to N.J.S.A. 40:55D-25(c), the Planning Board is hereinafter empowered to exercise all the powers and authority of a Board of Adjustment as set forth in the Municipal Land Use Law; but the Class I and the Class III members shall not participate in the consideration of applications for development which involve relief pursuant to N.J.S.A. 40:55D-70(d).

§ 5-14. Repealer.

Pursuant to N.J.S.A. 40:55D-69, the ordinance previously adopted establishing the Zoning Board of Adjustment is repealed, and the Zoning Board of Adjustment is hereby abolished.

§ 5-15. Pending applications.

This article shall take effect immediately, except that the Board of Adjustment will continue in force and effect for the time required to complete and decide any pending applications for which a hearing is now scheduled or in progress.

ARTICLE IV
Environmental Commission
[Adopted 1-28-1998 by Ord. No. 3-98]

§ 5-16. Creation.

The Borough of Atlantic Highlands Environmental Commission is hereby established pursuant to N.J.S.A. 40:56A-1 to 40:56A-7, as amended.

§ 5-17. Members.

- A. The Commission shall consist of seven members appointed by the Mayor, one of whom shall also be a member of the Planning Board and all of whom shall be residents of the Borough of Atlantic Highlands; the members shall serve without compensation except as hereinafter provided. The Mayor shall designate one of the members to serve as Chairman and presiding officer. The terms of the office shall be for three-year periods.⁷
- B. The governing body may remove any member or alternate member of the Commission during their term for cause, on written charges served upon the member and after a hearing thereon at which the member shall be entitled to be heard in person or by counsel. A vacancy on the Commission occurring other than at the expiration of a term shall be filled for the unexpired term in the same manner as an original appointment.⁸
- C. Alternate members.
 - (1) The governing body may appoint two alternate members, to be designated "Alternate No. 1" and "Alternate No. 2." The terms of the alternate members shall be for two years, except that the terms of the alternate members first appointed as Alternate No. 1 shall expire December 31, 1999, and as Alternate No. 2. shall expire December 31, 1998. A vacancy occurring otherwise than by expiration of term shall be filled by the appointing authority for the unexpired term only.
 - (2) An alternate member may participate in discussions of any matter or proceedings before the Commission, but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote first.
 - (3) No member or alternate member shall be permitted to act on any matter in which he has any personal or financial disqualifying interest.

§ 5-18. Powers of Commission.

The Commission is established to provide assistance and information for the protection, development or use of natural resources, including water resources, located within or abutting and affecting Atlantic Highlands, and shall generally have the powers provided by N.J.S.A. 40:56A-2, as may be amended. The Commission shall have power to conduct research into the use and possible use of the open land areas of the Borough and may coordinate with the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print, and distribute books, maps, charts, plans and pamphlets which

7. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

8. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

in its judgment it deems necessary for its purposes. It shall keep a index of all open areas, publicly or privately owned, including open marshlands, swamps and other wetlands, in order to obtain information and make recommendations on the proper use of such areas and may from time to time recommend to the Planning Board plans and programs for inclusion in the Master Plans and the development and use of such areas. The Commission shall have power to study and make recommendations concerning open space preservation, water resources management, air pollution control, solid waste management, noise control, soil and landscape protection, environmental appearance, marine resources and protection of flora and fauna, and other environmentally related concerns.

§ 5-19. Acquisitions by Commission.

The Environmental Commission may, subject to the approval and appropriate action of the governing body, acquire property, both real and personal, in the name of the Borough by gift, purchase, grant, bequest, devise or lease for any of its purposes and shall administer the same for such purposes subject to the terms of the conveyance or gift. Such an acquisition may be to acquire the fee or any lesser interest, development, rights, easement (including conservation easement), covenant or other contractual right (including a conveyance on conditions or with limitations or reversions), as may be necessary to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve and properly utilize open spaces and other land and water areas within or adjacent to the Borough.

§ 5-20. Records and annual reports.

The Environmental Commission shall keep records of its meetings and activities and make an annual report to the Mayor and Borough Council.

§ 5-21. Appropriations.

The Commission may appoint such clerks and other personnel and incur such expenses as it may from time to time require, providing the same shall be within the limits of funds appropriated to it by the governing body or otherwise available to it. The Commission shall not engage attorneys, engineers or other professionals or consultants without the approval of the Mayor and Borough Council.

ARTICLE V
Special Events Committee
[Adopted 5-25-2005 by Ord. No. 12-2005]

§ 5-22. Definitions.⁹

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

SPECIAL EVENT — Includes but is not limited to any event outside of the normal business operations of a public entity that is or may be dependent on the use of municipal facilities, lands, roads, services and/or finances. Examples of special events are art exhibits, carnivals, concerts, fairs, fireworks, parades, sports, hayrides, and filmmaking.

§ 5-23. Purpose and intent.¹⁰

- A. In some instances, special event sponsors are not affiliated with the Borough of Atlantic Highlands but invite the general public to participate in the special event which, at times, may take place on or near municipal property and which may create liability for the Borough and/or require the services of municipal employees and/or use of Borough facilities for said special events.
- B. It is necessary to identify and evaluate the requests for special events and the risks of liability that may impact the Borough of Atlantic Highlands, as well as the necessity to manage and coordinate the use of Borough facilities, services and employees for said special events.
- C. The Borough of Atlantic Highlands deems it necessary for a committee to be established to manage special events to reduce the risk of liability to the Borough and to facilitate the use of Borough facilities, services and employees for special events.

§ 5-24. Organization.

- A. The Special Events Committee (hereinafter, "the Committee") shall be comprised of the following, with one representative from each department, committee or organization assigned to the committee, the Borough Administrator and the Insurance Coordinator:
 - (1) Director of Public Works.
 - (2) Recreation Committee.
 - (3) Fire Marshal.
 - (4) Atlantic Highlands Municipal Harbor.
 - (5) Chamber of Commerce.
 - (6) Atlantic Highlands Police.
- B. The Insurance Coordinator shall serve as the Secretary for the Committee. All applications for special events shall be submitted to the Secretary. She/he shall keep a calendar of the dates, time and places of all special events and communicate with the sponsors of the special events on behalf of the Committee.

9. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

10. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- C. The Committee shall meet at least every third Thursday of each month in the Borough Hall and at any other time as deemed necessary and agreed upon by the members of the Committee.

§ 5-25. Responsibilities and authority.

- A. It shall be the responsibility of the Committee to:
- (1) Review all applications for permits governing special events.
 - (2) Review requests for public entity support services.
 - (3) Provide oversight when applicable.
 - (4) Provide technical assistance and information to sponsors and planners.
 - (5) Recommend appropriate health, safety and risk management techniques.
 - (6) Administer all special events agreements and permits.
- B. The Committee shall have the authority to:
- (1) Approve, deny or defer to Borough Council all applications for special events.
 - (2) To issue and revoke permits to hold special events.
 - (3) Set the deadlines for submitting applications.
 - (4) Determine and require event promoters or sponsors to provide essential services, including:
 - (a) Safety and traffic control.
 - (b) Fire protection.
 - (c) First aid stations.
 - (d) Health sanitation and cleanup.¹¹

11. Editor's Note: The original Provisions section, which immediately followed this section, may be found at Chapter 303, Special Events.

ARTICLE VI

Design Review Committee**[Adopted 12-18-2019 by Ord. No. 21-2019]****§ 5-26. Establishment.**

There is hereby established a Design Review Committee in and for the Borough of Atlantic Highlands in accordance with the provisions of this article.

§ 5-27. Purpose and intent.

The purpose of the Design Review Committee is to facilitate the development of public art in the Commercial Business District and/or Historic Business District within the Borough. The Mayor and Council find that it is in the best interest of the residents of and visitors to the Borough of Atlantic Highlands to create a committee to facilitate and promote the creation of public murals to achieve this purpose. The Committee shall ensure that public murals will complement the building and Commercial Business District and/or Historic Business District area with which they are associated.

§ 5-28. Organization; members; terms; meetings.

A. The Design Review Committee (hereinafter "the Committee") shall consist of seven members and may be assisted by such additional persons as the Committee from time to time deems warranted. The Committee shall, at minimum, be comprised of the following representative members:

- (1) Resident artist;
- (2) Resident Historical Society member;
- (3) Resident Arts Council member;
- (4) Planning Board member;
- (5) Resident Chamber of Commerce member;
- (6) Resident architect or professional planner;
- (7) Councilmember.

B. All Committee persons shall be appointed by and serve at the pleasure of the Mayor. Members shall be appointed for a one-year term expiring December 31 of each year; except that in reference to initial appointments, three members shall be appointed for a two-year term, and two members shall be appointed for a one-year term.

C. All applications for murals shall be submitted to the Municipal Clerk for review by the Committee with a copy to the Zoning Officer. The Committee shall meet at least monthly in the Borough Hall when an application for a mural has been presented and is pending and at any other time as deemed necessary and agreed upon by the members of the Committee.

§ 5-29. Officers.

The members of the Committee shall annually elect from their members the following officers with the following duties:

- A. Chairperson. The duties of the Chairperson will be to preside over all meetings of the Committee.
- B. Vice Chairperson. The duties of the Vice Chairperson will be to perform the duties of the Chairperson in case of absence or vacancy.
- C. Secretary. The duties of the Secretary will be to keep a record of all meetings, and at each meeting to make a report of the previous meeting.

§ 5-30. Responsibilities and authority; appeals.

- A. The Committee shall have the authority to:
 - (1) Review all application requests for a permit for an outdoor mural that is not already the subject of land use approval;
 - (2) Schedule a meeting with the applicant (who shall be either the property owner or a tenant with written permission of the property owner), not inconsistent with Chapter 229 of this Code, for the purpose of reviewing said application.
 - (3) Advise the applicant, in writing, of the date, time and place of said meeting to review the application.
 - (4) Make a recommendation to the Mayor and Council as to whether they should approve or deny the permit request for a public mural.
 - (5) Issue and revoke permits for outdoor murals once approved by the Mayor and Council.
 - (6) Forward the application to the Mayor and Council for final permit approval.
- B. Upon written recommendation for denial of an application by the Committee, the applicant may appeal the recommendation of the denial of their application to the Mayor and Council within 30 days of denial. The Mayor and Council shall review the denial and either affirm the denial, overturn the denial, or overturn the denial with added restrictions. The decision of the Mayor and Council on review of a denial of an application shall be final.

ARTICLE VII

Atlantic Highlands Veterans Affairs Committee**[Adopted 8-11-2022 by Ord. No. 10-2022]****§ 5-31. Atlantic Highlands Veterans Affairs Committee.**

There is hereby established a volunteer advisory committee called the Atlantic Highlands Veterans Affairs Committee.

§ 5-32. Purpose.

The mission of the Atlantic Highlands Veterans Affairs Committee shall be: a) to relay the questions or concerns of veterans of the armed forces who are residents of Atlantic Highlands to the governing body; b) to provide information on various federal, state and local programs for which Atlantic Highlands' veterans may be eligible and entitled to participate in; c) to research and analyze the needs of Atlantic Highlands' veterans and make recommendations to the Mayor and Council regarding how those needs may be best served; and d) to research and provide information to the Mayor and Council concerning the accomplishments and sacrifices of Atlantic Highlands veterans and propose ways by which this information can be shared with the general public.

§ 5-33. Membership.

The Atlantic Highlands Veterans Affairs Committee shall consist of five members appointed by the Mayor with the advice and consent of the Council. At least three members shall always be veterans of the armed forces. Two of the five founding members shall serve for terms of three years, two of the five founding members shall serve for a term of two years, and one of the five founding members shall serve for a term of one year after which all shall serve for staggered terms of three years. Any vacancies shall only be filled by appointment of the Mayor with the advice and consent of the Council for the remainder of the term of the individual having left the seat vacant.

§ 5-34. Administrative/budgetary support.

The Atlantic Highlands Veterans Affairs Committee is an entirely voluntary advisory body without any designated budget or support staff but may from time-to-time be permitted to request certain administrative or financial support for specific projects. Any such request shall be voted on and approved by a majority of its membership and then made in written form to the Borough Administrator for review and recommendation to the Mayor and Council for consideration based upon the availability of resources.

§ 5-35. Effective date.

This article shall become effective on January 1, 2023.

ATLANTIC HIGHLANDS CODE

Chapter 15

COURT, MUNICIPAL

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 1-25-1949 by Ord. No. 339; amended in its entirety at time of adoption of Code (see Ch. 1, General Provisions, Art. I). Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Officers and employees — See Ch. 44.

Police Department — See Ch. 50.

§ 15-1. Establishment.

A municipal court for the Borough of Atlantic Highlands is established as of February 1, 1949, pursuant to the provisions of N.J.S.A. 2B:12-1 et seq., as amended and supplemented.

§ 15-2. Name.

The name of the court shall be the "Municipal Court of the Borough of Atlantic Highlands".

§ 15-3. Seal.

The Municipal Court shall have a seal which shall bear the impress of the name of the Court.

§ 15-4. Powers and duties.

The Municipal Court and the Judge thereof shall have, possess and exercise all the functions, powers, duties and jurisdiction conferred by the provisions of N.J.S.A. 2B:12-1 et seq., as amended and supplemented, or by any other law.

§ 15-5. Judge.

There shall be a Judge of the Court who shall be appointed by the Mayor, with the advice and consent of the Council, who shall serve for a term of three years from the date of their appointment and until their successor is appointed and qualified.

§ 15-6. Municipal Court Administrator.

There shall be a Municipal Court Administrator who shall serve for a term of three years from the date of their appointment and until their successor is appointed and qualified. The Court Administrator shall perform such functions and duties as are prescribed by law, the rules of the courts and the Judge.

§ 15-7. Holding of Court.

The Municipal Court shall be held in the Municipal Building of the Borough of Atlantic Highlands at such times as the business of the Court may require, subject to the rules applicable to Municipal Courts.

EMERGENCY MANAGEMENT

Chapter 20

EMERGENCY MANAGEMENT

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Fire Department — See Ch. 24.

Flood damage prevention — See Ch. 183.

Police Department — See Ch. 50.

Stormwater control — See Ch. 306.

Fire prevention — See Ch. 178.

Stormwater management — See Ch. 311.

ARTICLE I

**Office of Emergency Management
[Adopted 11-12-1985 by Ord. No. 863]****§ 20-1. Purpose.¹²**

Because of the existing and increasing possibility of the occurrence of disasters of unprecedented size and destruction from fire, flood, hurricane, tropical storm or other natural or man-made causes, such as blackouts and power failures, aircraft accidents, chemical and radiological accidents, and in order to ensure that preparations of this Borough will be adequate to deal with such disasters and generally to provide for the common defense and to protect the public health and safety and to preserve the lives and property of the residents of this Borough, it is hereby found and declared to be necessary to:

- A. Create the Office of Emergency Management.
- B. Provide for the rendering of mutual aid to other municipalities within the State of New Jersey and adjoining states and to cooperate with the state government with respect to carrying out emergency functions.
- C. Create and test an emergency operations plan for all divisions of Borough government in the event of one of the aforementioned disasters.

§ 20-2. Intergovernmental coordination of emergency functions.

It is further declared to be the purpose of this article and the policy of this Borough that all emergency functions of this Borough be coordinated to the maximum extent with the comparable functions of the state government, including its various departments and agencies, of other municipalities and private agencies of every type so that a comprehensive plan may make the best use of this Borough's manpower, resources and facilities in the event that a disaster does occur.

§ 20-3. Office of Emergency Management.¹³

- A. It is further declared to be the purpose of this article and the policy of this Borough to organize an emergency management organization, in conformity with the Civil Defense Act as directed by P.L. 1942, c. 251, as amended. The name of this organization shall be as follows: Office of Emergency Management, Local Emergency Planning Committee (LEPC).
- B. There is hereby created a Local Emergency Planning Committee (LEPC), which shall be composed of not more than 15 members who shall be appointed by the Mayor and shall hold office at the will and pleasure of the Mayor. The members of the Local Emergency Planning Committee (LEPC) shall be considered members of the Office of Emergency Management.

§ 20-4. Emergency Management Coordinator.

- A. The Office of Emergency Management shall be under the direct supervision of an Emergency Management Coordinator, who shall be appointed by the Mayor from among the residents of the Borough. The Emergency Management Coordinator shall serve as chairperson of the Local Emergency Planning Committee (LEPC).¹⁴

12. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

13. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- B. The Emergency Management Coordinator shall serve a term of three years, subject to fulfilling the requirements of N.J.S.A. App. A:9-40.1.

§ 20-5. Deputy Emergency Management Coordinators.¹⁵

The Emergency Management Coordinator shall appoint Deputy Emergency Management Coordinators, with the approval of the Mayor. Whenever possible, such deputies shall be appointed from among the salaried officers or employees of the Borough. The Deputy Emergency Management Coordinators shall also be designated Deputy Municipal Disaster Control Directors pursuant to N.J.S.A. App. A:9-40.3.

§ 20-6. Duties of Office of Emergency Management.¹⁶

The Office of Emergency Management shall, under the direction of the Coordinator and Deputy Coordinators, test and implement the National Incident Management System (NIMS) and be prepared to activate it whenever necessary. The Emergency Management Coordinator shall coordinate activities of the various municipal departments, private businesses and agencies in the event of any of the aforementioned disasters.

§ 20-7. Enforcement.

It shall be the responsibility of the Office of Emergency Management to carry out and enforce such orders, rules and regulations, as issued by the Mayor or the chain of command as outlined by the emergency management plan, under the authority of this article. The Office of Emergency Management shall have available for inspection all such orders and rules and regulations made by the Mayor or the chain of command or under their authority.

§ 20-8. Emergency Operations Center.¹⁷

- A. The Office of Emergency Management shall have a fully functional emergency operations center, which shall be ready to coordinate all Borough, county, state, federal and other agencies' functions in the event of a disaster. It shall also have an alternate operations center planned in the event that the first shall be damaged or unusable.
- B. The primary Emergency Operations Center will be at Borough Hall, 100 First Avenue, Atlantic Highlands, New Jersey 07716. The alternate Emergency Operations Center will be located at Fire Headquarters, East Highland Avenue, Atlantic Highlands, New Jersey 07716.

14. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

15. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

16. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

17. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE II

National Incident Management System (NIMS)**[Adopted 5-23-2007 by Ord. No. 09-2007]****§ 20-9. Short title.**

This article shall be known and may be cited and referred to as "The National Incident Management System (NIMS) Ordinance for the Borough of Atlantic Highlands."

§ 20-10. Intent and purpose.

- A. It is the intent and purpose of this article to formally recognize the National Incident Management System (NIMS) and adopt the principles and policies of the NIMS that will insure the complete and efficient utilization of all Borough of Atlantic Highlands resources to combat disaster resulting from enemy actions or other disasters as defined herein.
- B. The purpose of the NIMS is to provide a consistent nationwide approach for federal, state, county, territorial, tribal, and local governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.
- C. The NIMS provides a common foundation for day-to-day operations, training and other preparedness efforts; communicating and sharing information with other responders and with the public, ordering resources to assist with a response effort, and for integrating new technologies and standards to support incident management.

§ 20-11. Definitions.

The following definitions shall apply in the interpretation of this article:

COORDINATOR — The Coordinator of the Borough of Atlantic Highlands Office of Emergency Management, appointed as prescribed in this article.

DISASTER — Includes but is not limited to actual or threatened enemy attack, sabotage, extraordinary fire, flood, storm, epidemic, accident, chemical spill or other impending or actual calamity endangering or threatening to endanger health, life or property of constituted government.

EMERGENCY MANAGEMENT — Refers to the basic government functions of maintaining the public peace, health and safety during an emergency. This term includes plans and preparations for protection and relief, recovery and rehabilitation from effects of an attack by the forces of an enemy nation or the agents thereof, or a disaster as defined herein. It does not, however, include any activity that is the primary responsibility of the military forces of the United States.

EMERGENCY MANAGEMENT FORCES — The employees, equipment and facilities of all Borough departments, agencies, boards, councils, institutions and commissions; and in addition, it shall include all volunteer personnel, equipment and facilities contributed by, or obtained from, volunteer persons or agencies that are assigned the duties of responding to emergencies within Atlantic Highlands.

INCIDENT COMMAND SYSTEM (ICS) — The combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure, designed to aid in domestic incident management activities.

NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) — A document produced by the Department of Homeland Security under the direction of Presidential Directive-5 that strengthens response capabilities through a balance between flexibility and standardization, and use of common doctrine,

terminology, concepts, principles, and processes.

NIMS INTEGRATION CENTER (NIC) — The federal agency established to provide strategic direction and oversight of the NIMS, supporting both routine maintenance and continuous refinement of the system and its components. NIC develops and facilitates national standards for the NIMS.

§ 20-12. Adoption of NIMS.

- A. The Borough formally adopts NIMS as its system of response to a disaster and to provide a common foundation for training and other preparedness efforts, for communicating and sharing information with other responders and with the public, for ordering resources to assist with a response effort and for integrating new technologies and standards to support incident management.
- B. The NIMS principles and policies are to be adhered to by all emergency management forces and across all functional disciplines within Atlantic Highlands.
- C. Atlantic Highlands shall institutionalize the use of the ICS in order to enhance command, control and communications capabilities.

§ 20-13. Appointment and duties of Coordinator.

- A. The Atlantic Highlands Emergency Management Coordinator shall serve as the Coordinator of NIMS operations pursuant to this article.
- B. The Coordinator shall have the following duties and responsibilities:
 - (1) To consult with other agencies, municipalities, and affected organizations in Atlantic Highlands to recommend levels of NIMS training. However, it shall be the responsibility of each agency to implement said training and to ensure its own commitment to NIMS.
 - (2) To oversee Atlantic Highlands commitment to NIMS through planning, training, and implementation.

§ 20-14. Violations.

It shall be a misdemeanor for any person to violate any of the provisions of this article or plans issued pursuant to the authority contained herein, or to willfully obstruct, hinder or delay any member of the Emergency Management organization as herein defined in the enforcement of the provisions of this article or any plan issued hereunder.

§ 20-15. Conflicting ordinances, orders, rules and regulations suspended.

At all times when the orders, rules and regulations made and promulgated pursuant to this article shall be in effect, they shall supersede all existing ordinances, orders, rules and regulations insofar as the latter may be inconsistent therewith.

§ 20-16. Applicability extension.¹⁸

The municipal organizations listed below are hereby directed to provide in their bylaws for the implementation during a disaster of the National Incident Management System, including all forms and conditions specified therein.

18. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- A. Atlantic Highlands Fire Department.
- B. Atlantic Highlands First Aid and Safety Squad.
- C. Atlantic Highlands Office of Emergency Management.
- D. Atlantic Highlands Police Department.

Chapter 24**FIRE DEPARTMENT**

[HISTORY: Adopted by Mayor and Council of Borough of Atlantic Highlands 7-25-1944 by Ord. No. 314. Amendments noted where applicable.]

GENERAL REFERENCES

Police Department — See Ch. 50.

Fire prevention — See Ch. 178.

§ 24-1. Membership. [Amended 6-23-1970 by Ord. No. 590; 11-28-1978 by Ord. No. 736; 8-26-1980 by Ord. No. 767; 11-22-1988 by Ord. No. 926-88; 12-27-1995 by Ord. No. 22-95]

- A. Membership in the Fire Department shall be limited to those who have qualified as to age requirement in accordance with the state statutes. To be an active member in good standing, each member must meet the following requirements:
- (1) Each member must reside or have regular employment within a radius of two miles of the borders of the Borough of Atlantic Highlands.
 - (2) Each member shall attend 40% of all fires, unless excused by officers of the member's company.
 - (3) Each member shall pay the dues of, and abide by the by laws of, the member's company.
- B. Each active member in good standing of the respective companies shall receive as compensation for expenses the sum of \$100 per year.

§ 24-2. Companies. [Amended 11-30-1961 by Ord. No. 450]

The Fire Department shall be divided into three companies and be known as the Hook and Ladder Company No. 1, Atlantic Highlands Hose Company No. 1, and Robert B. Mantell Hose Company No. 2. Each company shall have a membership not exceeding 25 members, and such company may adopt bylaws for the government of said company not inconsistent with the laws of the State of New Jersey or of this or any other ordinance of the Borough. Each company shall have such officers as are provided for by their bylaws. No other fire companies shall be organized within the Borough of Atlantic Highlands without the consent and authorization of the Mayor and Council.

§ 24-3. Officers. [Amended 12-11-2002 by Ord. No. 16-2002]

Department Line Officers shall be the Chief, Deputy Chief, Captain and a first, second, third and fourth Lieutenant and Chief Engineer. These Officers shall be elected by the Department membership and, subject to confirmation of the Mayor and Council, shall serve for one year from the first day of January following their election.

§ 24-4. Safety Officer. [Added 12-11-2002 by Ord. No. 16-2002]

A Department Safety Officer shall be appointed by the Chief and shall serve for the calendar year of appointment.

§ 24-5. Purchasing Agent.¹⁹

A Fire Department Purchasing Agent shall be elected by the members of the Atlantic Highlands Fire Department and shall serve for the calendar year.

§ 24-6. Elections.

- A. In November, at the Department's regularly scheduled business meeting, the Chief, Deputy Chief, Captain and a 1st, 2nd, 3rd and 4th Lieutenant and Chief Engineer for the following year shall be elected. A candidate must be a regular member of either the Hook and Ladder Company, Hose Company 1 or Hose Company 2, meet current state requirements and have served in the preceding elected position, or a higher position, for all of the current year or any full prior year. Any member who has previously completed a year of service as a Company Officer of this Department may be a candidate for the next higher position or below. A candidate for the position of 4th Lieutenant can be any regular member. **[Amended 12-11-2002 by Ord. No. 16-2002]²⁰**
- B. Said election shall be held at the fire house, and the polls shall be opened between the hours of 7:00 p.m. and 9:00 p.m. of the day appointed for holding said election. The Department shall choose a Judge, Clerk and Tellers for said election. A statement of the result of such election shall be signed by the Judge and Clerk and submitted to the Mayor and Council at its next regular meeting held after said election. The said Mayor and Council shall canvass said returns and declare the result, and the persons so declared by the Mayor and Council to be elected as Chief, Deputy Chief and Captain shall hold their offices for one year from the first day of January ensuing. **[Added 11-10-1970 by Ord. No. 603]²¹**
- C. If a vacancy occurs in any elected position, or if the Mayor and Council fail to confirm a person elected by the Department, the Mayor, with the consent of the Council, may fill this vacancy with a qualified regular member of the Department for a period not exceeding the lesser of 30 days or the unexpired term. Within this period, the Department shall hold an election for this position and, subject to confirmation, this person shall serve for the unexpired term. If a vacancy occurs in any position appointed by the Chief, the Chief shall appoint a replacement to serve for the unexpired term. **[Amended 12-11-2002 by Ord. No. 16-2002]²²**
- D. No person shall be eligible for the office of Chief without serving one year as Deputy Chief, or Deputy Chief without serving one year as Captain. No person shall be eligible for the office of Captain without serving two years as Lieutenant.²³

§ 24-7. Duties. [Amended 3-9-1965 by Ord. No. 490; 6-9-1970 by Ord. No. 585; 8-26-1980 by Ord. No. 767; 9-10-1985 by Ord. No. 862; 12-11-2002 by Ord. No. 16-2002]²⁴

- A. Fire scene or other dispatch of the Department. Department members shall respond to all fire calls or other dispatches under the direction and command of the Chief. When responding to any call or dispatch of the Department in the Chief's absence, the Deputy Chief, Captain, and the Lieutenants

19. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

20. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

21. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

22. Editor's Note: Former Subsection D, regarding officers being members of different companies, which immediately followed this subsection, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

23. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

24. Editor's Note: This ordinance also repealed former § 51-5, Duties of Chief, First Assistant Chief and Second Assistant Chief and § 51-6, Duties of officers in charge.

shall assume the duties of Chief, in this order.²⁵

B. Other duties of the Chief, Deputy Chief and Captain.

- (1) The Deputy Chief shall operate under the direction of the Chief.
- (2) The Captain shall operate under the direction of the Chief and shall oversee all Lieutenants. He is responsible for the testing of hoses, ladders and the SCBA equipment and refill system.
- (3) The Chief, Deputy Chief and Captain may lawfully enter and examine any building, place, vehicle or vessel where any explosive or flammable material may be lodged. They may, in writing, direct the removal or securing of any such material and if the possessor of the material neglects or refuses, a summons may be issued and the possessor shall be subject to penalties provided for the violation of Borough ordinances.
- (4) Annually, as an expense allowance to reimburse each for expenses incurred, the Chief shall receive the sum of \$1,500, the Deputy Chief shall receive \$1,250, and the Captain, \$1,000.

C. Duties of line officers, engineers and members.

- (1) Lieutenants shall operate under the direction of the Captain and are responsible for their assigned vehicle and its SCBA packs, hoses, ladders, tools and equipment.
- (2) The Chief and Line Officers shall wear helmets identifying their respective office when on duty.
- (3) The Chief Engineer shall operate under the direction of the Chief and is responsible for maintaining operational status and arranging necessary service for all Department equipment. He shall direct and oversee all Assistant Engineers and qualify all new drivers. He shall have purchasing authority subject to approval of the Chief.
- (4) The Safety Officer shall operate under the direction of the Chief and is responsible for insuring fire ground safety and performing the statutory duties of a Safety Officer.
- (5) The Fire Department Purchasing Agent shall:²⁶
 - (a) Assist the Fire Chief with the municipal budget, obtain quotes and bids for the purchase of Fire Department equipment, equipment maintenance, service contracts and vehicle repairs.
 - (b) Fill out, sign and submit purchase requisitions.
 - (c) Sign and submit purchase orders for payment.
 - (d) Keep and maintain a monthly account of the Fire Department municipal budget.
 - (e) Obtain approval from the Fire Department Chief prior to submitting purchase requisitions.

§ 24-8. Secretary to furnish list.

On or before the last Wednesday in November in each and every year it shall be the duty of the Secretary of each company to report to the Chief the name, the residence and occupation of each person elected a member of his company and at the same time furnish that officer with a correct list of all members of his company, regularly equipped, designating their names and residences, which list the Chief shall file with

25. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

26. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

the Clerk of the Council at their next regular meeting. On or before the last Wednesday in November in each year, the Secretary of each fire company shall give to the Chief the names of all members of his company who have died, resigned or been expelled within the last preceding year, that such names may and they shall appear in the Chief's annual report to the Mayor and Council and be kept as public record.

§ 24-9. Fireman on duty.

Any building used for public entertainment must provide proper exits with doors opening outward. They shall have at least one fireman on duty at each show or entertainment, unless otherwise ordered by the Chief. The Chief or in his absence the First Assistant Chief or Second Assistant Chief shall designate such firemen to attend such entertainment. For any violation of this section, the Mayor and Council shall have power to close such show or entertainment, and upon conviction before the Recorder or Mayor shall pay a fine of not exceeding \$100 and costs.

§ 24-10. Permission required for apparatus to leave Borough. [Amended 12-11-2002 by Ord. No. 16-2002]

No apparatus shall leave the Borough except by permission of the Mayor, Chief or, in his absence, the Deputy Chief or Captain.

§ 24-11. Use on trial of skill restricted.

No fire apparatus shall be used on any trial of skill except by written consent of the Council.

§ 24-12. Damaging apparatus; fine.

Any persons who shall willfully drive, propel, or cause to be driven or propelled, any vehicle over hose or other fire apparatus or shall willfully cut or deface the same, shall, upon conviction thereof, before the Mayor or Borough Recorder for each and every offense pay a fine of not exceeding \$100.²⁷

§ 24-13. Penalties.

The penalty for the violation of this article or any part thereof to which no specific penalty is attached shall, in the case of an officer, be degraded from office, and in the case of a fireman, suspension from the Department, and these penalties shall be enforceable at the option of the Council.

§ 24-14. Duty to report violation.

It shall be the duty of the officers of the Department to promptly report any violation of this article to the Chief, who shall in turn report the same to the Mayor and Council at its next meeting, which shall examine into such charge or charges and shall take such action therein as it may deem advisable.

§ 24-15. Term of office.

The term of active service required of a member of any Hose or Hook and Ladder Company of the Fire Department of the Borough of Atlantic Highlands, acting under and subject to the direction, authority and control of the Council of the Borough of Atlantic Highlands, shall be seven years in order to entitle any such member of such company as aforesaid to become an exempt fireman.

27. Editor's Note: Original § 51-12, False alarm; penalty, which immediately followed this section, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 24-16. Exempt fireman.

Whenever any fireman who shall be a member of any Hose or Hook and Ladder Company of the Fire Department of Atlantic Highlands acting under and subject to the Mayor and Council of the Borough shall present and deliver to the Clerk of the Borough a certificate in writing signed by the officer in charge, and attested by the Secretary of such Hook and Ladder or Hose Company of which such fireman is a member, to the effect that such fireman has served in such company as an active fireman for the term of seven years next preceding the date of such certificate, the Municipal Clerk shall deliver and present to any such fireman three certificates in writing, signed by the Fire Chief, the Mayor of the Borough, and attested by the Municipal Clerk with the Corporate Seal of said Borough of Atlantic Highlands thereto affixed, to the effect that such fireman by reason of said seven years' service as such active fireman, as aforesaid, is from the date of such certificate and from thenceforth an exempt fireman and entitled to all the rights and privileges granted to exempt firemen by the laws of the State of New Jersey.

§ 24-17. Life membership. [Added 11-23-1971 by Ord. No. 618]²⁸

An exempt member of the Atlantic Highlands Fire Department who has completed 20 years of active service may be eligible to receive life membership. To receive life membership, an active or past active member must apply and then be approved by a majority vote in his respective company and a majority vote of the Department. A life member is exempt from all compulsory duties of the companies and is granted every privilege of an active member, including a vote on every action of the company and Department and the right to hold any office within the company, except that of a line officer. A life member is not eligible to receive payment from the Borough as compensation for his services.

§ 24-18. Additional-duty compensation.²⁹

Reasonable compensation shall be made to any members of said Department designated by the Chief, or Deputy Chief for fire duty performed in addition to the regular duties of attendance at fires.

28. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

29. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

FIREMEN, AUXILIARY

Chapter 28

FIREMEN, AUXILIARY

[HISTORY: Adopted by the Mayor and Council of Borough of Atlantic Highlands 1-25-1944 by Ord. No. 312. Amendments noted where applicable.]

GENERAL REFERENCES

Fire Department — See Ch. 24.

§ 28-1. Authorization to appoint.³⁰

In addition to the membership provided in Chapter 24, Fire Department, of this Code, and the amendments thereto, the Chief of the Fire Department is hereby given the power and authority to appoint not more than 30 persons between the age limits of 16 and 70 years, to be known as "auxiliary firefighters." Said auxiliary firemen shall perform such fire duties as may be designated and directed by the Chief of the Fire Department, and shall be entitled to all the privileges accorded regular firemen with the exception of any benefits arising from the standpoint of time of service or any other benefits to which firemen are entitled, with the exception of insurance coverage against personal injuries sustained in the performance of fire duties. Said auxiliary firemen, regardless of service and attendance at meetings, shall not be eligible to receive an exempt firemen's certificate.

§ 28-2. When effective. [Amended 11-10-1970 by Ord. No. 602]

This chapter shall take effect immediately upon its adoption.

30. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 34**LENGTH OF SERVICE AWARDS PROGRAM**

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 7-28-2004 by Ord. No. 11-2004³¹. Amendments noted where applicable.]

GENERAL REFERENCES

Fire Department — See Ch. 24.

Retirement — See Ch. 63.

Officers and employees — See Ch. 44.

§ 34-1. Establishment.

A Length of Service Award Program (LOSAP) is herewith established in accordance with Chapter 388 of the Laws of 1997 (N.J.S.A. 40A: 14-183 et seq.), to reward members of the volunteer Fire Department and First Aid Squad for their loyal, diligent and devoted services to the residents of the Borough of Atlantic Highlands.

§ 34-2. Administration of program.

The LOSAP shall provide for fixed annual contributions from the Borough of Atlantic Highlands to a deferred income account for each volunteer member that meets the criteria set forth below; that such contributions shall be made in accordance with a plan that shall be established by the Borough of Atlantic Highlands pursuant to P.L. 1997, c. 388; and that such plan shall be administered in accordance with the laws of the State of New Jersey, the U.S. Internal Revenue Code and this chapter.

§ 34-3. Contribution; criteria for eligibility.

A. The LOSAP shall provide for annual contributions, by the Borough of Atlantic Highlands, to a deferred income account, for each eligible member that meets the criteria as follows:

- (1) Fire Department criteria. A regular or life member who is credited with a year of active service and accumulates points as follows:

75 to 79 points	\$100 contribution
80 to 84 points	\$200 contribution
85 to 89 points	\$300 contribution
90 to 94 points	\$400 contribution
95 to 99 points	\$500 contribution
100 points +	\$1,150 contribution

- (2) First Aid Squad criteria.

31. Editor's Note: This ordinance was approved at referendum 11-2-2004.

- (a) A regular, exempt, life or fully certified Associate Member who is credited with a year of active service and accumulates 100 or more points will receive contributions as follows:
 - [1] First year and 100 points: \$600 contribution.
 - [2] Second year and 100 points: \$900 contribution.
 - [3] Third year and 100 points: \$1,150 contribution.
 - (b) Also, members having three or more years of prior service will be eligible for the maximum contribution upon accumulating 100 points.
- B. The estimated cost to the Borough of Atlantic Highlands for LOSAP is \$65,000 per year for the regular annual services of eligible volunteers of the Fire Department and First Aid Squad.

§ 34-4. Point schedule.

Each active volunteer member shall be credited with points for volunteer services provided to the volunteer Fire Department and First Aid Squad in accordance with the following schedules:

A. Fire Department.

- (1) Fire calls: one point per 1% of calls attended; maximum 75 points. **[Amended 2-9-2023 by Ord. No. 03-2023]**
- (2) Training/drills/special assignments: two points per two hours; maximum 40 points.
- (3) Meetings: two points per monthly or special Department meeting; maximum 30 points. **[Amended 2-9-2023 by Ord. No. 03-2023]**
- (4) Longevity service: one point per year of service.
- (5) Elected positions: 20 points for each elected Line or Officer position; maximum 40 points.
- (6) Fund-raising: one point per one-hour service performed; maximum 35 points. **[Amended 2-9-2023 by Ord. No. 03-2023]**
- (7) Sanctioned activities: five points per function; maximum 30 points.
- (8) Extra credit: one point per one hour; maximum 24 points.

B. First Aid Squad.

- (1) Ten percent to 14% of calls: 30 points.
- (2) Fifteen percent to 19% of calls: 35 points.
- (3) Twenty percent to 24% of calls: 40 points.
- (4) Twenty-five percent to 29% of calls: 45 points.
- (5) Thirty percent and up: 50 points.
- (6) Training/drills/special assignments: two points per two hours; maximum 40 points.
- (7) Meetings: two points per monthly or special Department meeting; maximum 24 points.

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- (8) Work details: two points per two hours of approved and verified work details.
- (9) Elected officials: Upon completion of one full year:
 - (a) Captain: 40 points.
 - (b) First Lieutenant: 35 points.
 - (c) Second Lieutenant: 35 points.
 - (d) Engineer: 20 points.
 - (e) President: 35 points.
 - (f) Vice President: 25 points.
 - (g) Treasurer: 35 points.
 - (h) Secretary: 25 points.
 - (i) Assistant Secretary: 15 points.
- (10) Life members: 45 points.
- (11) Fund-raising: one point per one-hour Squad-sanctioned fund-raisers.
- (12) Sanctioned activities: five points per function; maximum 30 points.
- (13) Extra credit: two points per two hours of other approved activities not otherwise listed.

§ 34-5. Death of eligible volunteer.

The Borough of Atlantic Highlands stipulates that the deferred income account balance of an eligible volunteer who dies prior to full vesting in LOSAP will be awarded to the estate of the participating member.

OFFICERS AND EMPLOYEES

Chapter 44

OFFICERS AND EMPLOYEES

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Fire Department — See Ch. 24.

Police Department — See Ch. 50.

ARTICLE I
Chief Financial Officer
[Adopted 2-28-1989 by Ord. No. 930-89]

§ 44-1. Appointment; term.

There shall be a Chief Financial Officer of the Borough appointed by the Borough Council, and who shall serve at the pleasure of the governing body. The Chief Financial Officer may, but need not, be a person who is also employed by the Borough in another capacity.

§ 44-2. Responsibilities.

The Chief Financial Officer shall carry out the responsibilities set forth under P.L. 1947, c. 151 (N.J.S.A. 52:27BB-26 et seq.).

§ 44-3. Compensation.

Compensation for the Chief Financial Officer shall be established by ordinance.³²

32. Editor's Note: The currently effective Salary Ordinance is on file in the office of the Municipal Clerk.

ARTICLE II
Housing Inspector
[Adopted 2-20-1991 by Ord. No. 990-91]

§ 44-4. Creation of office.

The office of Housing Inspector of the Borough of Atlantic Highlands is hereby created and shall be hereafter designated as the Housing Inspector of the Borough of Atlantic Highlands, and the appointee to said office shall hereafter be designated as "Housing Inspector."

§ 44-5. Appointment of Housing Inspector.

The Housing Inspector shall be appointed by a majority vote of the governing body and shall hold office until December 31 of the year of said appointment. Any vacancy in said office shall be filled by the governing body for the unexpired portion of such term. The Housing Inspector shall be chosen by the governing body solely on the basis of his qualifications, with special reference to his actual training and/or experience in the field of housing construction, maintenance and inspection, and his familiarity with the statutes, codes, ordinances and resolutions of the State of New Jersey and the Borough of Atlantic Highlands governing the same.

§ 44-6. Salary.³³

The salary of the Housing Inspector shall be established by the annual Salary Ordinance on file in the office of the Municipal Clerk.

§ 44-7. Powers and duties.

The Housing Inspector shall be responsible to the governing body for the proper administration of his office, and to that end he shall be responsible for the implementation and enforcement of all ordinances, resolutions and rules and regulations of the Borough of Atlantic Highlands providing for the maintenance, occupancy, certificates of occupancy and related matters affecting multiple-family dwellings in the Borough of Atlantic Highlands.

§ 44-8. Powers and duties restricted.

Nothing herein contained shall derogate from or authorize the Housing Inspector of the Borough of Atlantic Highlands to exercise the powers and duties of any elected official of the Borough of Atlantic Highlands and the boards, bodies and commissions thereof established pursuant to law.

33. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE III
Zoning Officer
[Adopted 4-6-1994 by Ord. No. 45-94]

§ 44-9. Zoning Officer.

There is hereby established in the Borough of Atlantic Highlands the position of Zoning Officer as a Borough employee.

§ 44-10. Duties.

The Zoning Officer shall perform all of the duties set forth in Chapter 150, Development Regulations, of the Borough of Atlantic Highlands.

ARTICLE IV
Public Defender
[Adopted 1-28-1998 by Ord. No. 2-98]

§ 44-11. Position established; appointment; term.

There is hereby established the position of Public Defender for the Borough, which position shall be filled by the appointment of the Mayor with the advice and consent of the Borough Council. The Public Defender shall represent all persons determined as indigent for whom such representation is directed by the Municipal Court Judge. The term of office of the Public Defender shall be one year, commencing January 1 of the calendar year and concluding December 31 of the same year. The Public Defender shall be an attorney licensed to practice law in New Jersey.

§ 44-12. Applications for services of Public Defender; fee.

- A. In order to obtain the services of the Public Defender, application must be made to the Municipal Court. The Municipal Court Judge shall make a decision as to whether a defendant is indigent after reviewing the defendant's application, based upon whether the defendant has the financial ability to secure competent legal representation and other appropriate criteria.
- B. The Municipal Court Judge shall assess a fee as provided in Chapter 168 from each defendant who requires the services of the Public Defender. The Judge may waive this fee in whole or in part if the Judge determined the fee represents an unreasonable burden on said defendant. The defendant's inability to pay the fee shall in no way affect or reduce the rendering of services to him/her by the Public Defender.³⁴

§ 44-13. Reimbursement.

Payment to the Public Defender shall be by annual salary fixed by the Borough by separate ordinance.³⁵

34. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

35. Editor's Note: The currently effective Salary Ordinance is on file in the office of the Municipal Clerk.

ARTICLE V
Deputy Clerk
[Adopted 2-24-2004 by Ord. No. 2-2004]

§ 44-14. Appointment; term.

There shall be a Deputy Municipal Clerk appointed by the Mayor and Council. The term of office shall be three years, which shall run from January 1 in the year in which the Deputy Clerk was appointed.

§ 44-15. Duties.

The Deputy shall assist with Statutory and Borough assigned duties of the Clerk's office. During the absence or disability of the Municipal Clerk, the Deputy shall have all the powers of the Municipal Clerk and shall perform the functions and duties of such office.

§ 44-16. Compensation.

The salary shall be established in the Salary Ordinance.³⁶

36. Editor's Note: The currently effective Salary Ordinance is on file in the office of the Municipal Clerk.

ARTICLE VI

Business Administrator**[Adopted 9-28-2005 by Ord. No. 19-2005; amended in its entirety 8-12-2021 by Ord. No. 17-2021]****§ 44-17. Creation of position.**

The position of Business Administrator of the Borough of Atlantic Highlands is hereby created, and the employment of a Business Administrator is hereby authorized.

§ 44-18. Duties.

The Business Administrator shall be the liaison between the Mayor and Council and the various departments, boards and agencies of the Borough and shall perform such administrative and ministerial duties and functions as may be assigned by the Mayor and Council by resolution. The Business Administrator shall devote their entire time and effort to the performance of their duties and functions and shall not engage in any other occupation or employment while employed by the Borough.

§ 44-19. Appointment; qualifications.

Appointment to the office of Business Administrator shall be made by the Mayor or chief executive officer of the municipality with the advice and consent of the governing body.

§ 44-20. Compensation.

The compensation of the Business Administrator shall be at an annual rate as determined in the Salary Ordinance.³⁷

§ 44-21. Duration of office.

The term of the municipal Business Administrator shall be at the pleasure of the governing body.

§ 44-22. Absence or disability.

During the absence or disability of the Business Administrator, the Mayor and Council may, by resolution, appoint an officer of the Borough to perform the duties of the Administrator during such absence or disability.

§ 44-23. Removal from office.

The municipal Business Administrator may be removed by a 2/3 vote of the governing body. The resolution of removal shall become effective three months after its adoption by the governing body. The governing body may provide that the resolution shall have immediate effect; provided, however, that the governing body shall cause to be paid to the Administrator forthwith any unpaid balance of their salary and their salary for the next three calendar months following adoption of the resolution.

37. Editor's Note: The currently effective Salary Ordinance is on file in the office of the Municipal Clerk.

ARTICLE VII
Housing Liaison
[Adopted 7-26-2006 by Ord. No. 14-2006]

§ 44-24. Purpose.

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

§ 44-25. Definitions.

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

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

MUNICIPAL HOUSING LIAISON — The employee charged by the governing body with the responsibility for oversight and administration of the affordable housing program for the Borough of Atlantic Highlands.

§ 44-26. Establishment of position and compensation; responsibilities, powers and duties.

- A. Establishment of position of Municipal Housing Liaison. There is hereby established the position of Municipal Housing Liaison for the Borough of Atlantic Highlands.
- B. Subject to the approval of the Council on Affordable Housing (COAH), the Municipal Housing Liaison shall be appointed by the governing body and may be a full- or part-time municipal employee.
- C. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough, including the following responsibilities which may not be contracted out:
 - (1) Serving as the Borough's primary point of contact for all inquiries from the state, affordable housing providers, Administrative Agents, and interested households;
 - (2) Monitoring the status of all restricted units in the Borough's Fair Share Plan;
 - (3) Compiling, verifying, and submitting annual reporting as required by COAH;
 - (4) Coordinating meetings with affordable housing providers and Administrative Agents, as applicable;
 - (5) Attending continuing education programs as may be required by COAH;
 - (6) If applicable, serving as the Administrative Agent for some or all of the restricted units in the Borough as described in Subsection F below.
- D. Subject to approval by COAH, the Borough may contract with or authorize a consultant, authority, government or any agency charged by the governing body, which entity shall have the responsibility of administering the affordable housing program of the Borough. If the Borough contracts with another entity to administer all or any part of the affordable housing program, including the

affordability controls and Affirmative Marketing Plan, the Municipal Housing Liaison shall supervise the contracting Administrative Agent.

- E. Compensation. Compensation shall be fixed by the governing body at the time of the appointment of the Municipal Housing Liaison.
- F. The powers and duties of the Municipal Housing Liaison may include but are not limited to the following, some of which may be delegated to an approved Administrative Agent:
 - (1) Affirmative marketing.
 - (a) Conducting an outreach process to insure affirmative marketing of affordable housing units in accordance with the Affirmative Marketing Plan of the Borough and the provisions of N.J.A.C. 5:80-26.15.
 - (2) Household certification.
 - (a) Soliciting, scheduling, conducting and following up on interviews with interested households;
 - (b) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
 - (c) Providing written notification to each applicant as to the determination of eligibility or noneligibility;
 - (d) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendixes J and K of N.J.A.C. 5:80-26.1 et seq.;
 - (e) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and
 - (f) Employing the random selection process as provided in the Affirmative Marketing Plan of the Borough when referring household for certification to affordable units.
 - (3) Affordability controls.
 - (a) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
 - (b) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
 - (c) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the appropriate county's register of deeds or county Clerk's office after the termination of the affordability controls for each restricted unit;
 - (d) Communicating with lenders regarding foreclosures; and
 - (e) Ensuring the issuance of continuing certificates of occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

- (4) Resale and rental.
 - (a) Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or rental; and
 - (b) Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or rental.
- (5) Communicating with unit owners.
 - (a) Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership;
 - (b) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the cost of central air-conditioning systems; and
 - (c) Processing requests and making determinations on requests by owners of restricted units for hardship waivers.
- (6) Enforcement.
 - (a) Ensure that all restricted units are identified as affordable within the Tax Assessor's office and any municipal utility authority (MUA) and upon notification to the Administrative Agent of change in billing address, payment delinquency of two consecutive billing cycles, transfer of title, or institution of a writ of foreclosure on all affordable units, notifying all such owners that they must either move back to their unit or sell it;
 - (b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgment of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
 - (c) The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent can be made;
 - (d) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
 - (e) Establishing a program for diverting unlawful rent payments to the municipality's affordable housing trust fund or other appropriate municipal fund approved by the DCA;
 - (f) Establishing a rent-to-equity program;
 - (g) Creating and publishing a written operating manual, as approved by COAH, setting forth procedures for administering such affordability controls; and
 - (h) Providing annual reports to COAH as required.
- (7) The Administrative Agent shall have authority to take all actions necessary and appropriate to

carry out its responsibilities hereunder.

ARTICLE VIII
(Reserved)³⁸

§ 44-27. through § 44-32. (Reserved)

38. Editor's Note: Former Art. VIII, Assistant Harbor Master, adopted 5-27-2009 by Ord. No. 10-2009, was deleted at the direction of the Borough pursuant to Ord. No. 01-2012, adopted 1-25-2012.

ARTICLE IX

Deputy Tax Assessor

[Adopted 4-28-2010 by Ord. No. 07-2010]

§ 44-33. Position established.

The position of Deputy Tax Assessor is hereby established and authorized, to perform the duties and functions as per N.J.S.A. 40A:9-148.1; the term of said Deputy Tax Assessor as per N.J.S.A. 40A:9-148 shall be four years, commencing July 1, 2010.

§ 44-34. Compensation.

The compensation for the position of Deputy Tax Assessor, for services rendered, shall be fixed by resolution appointing the named individual to the position of Deputy Tax Assessor, and shall be at a rate between \$25 and \$50 per hour, plus reimbursement of out of pocket expenses, upon submission of vouchers to be approved by the Borough Administrator.

ARTICLE X

Borough Attorney**[Adopted 1-26-2011 by Ord. No. 02-2011]****§ 44-35. Creation of position.**

There is hereby established in the Borough of Atlantic Highlands, in the County of Monmouth and State of New Jersey, the position of Borough Attorney.

§ 44-36. Appointment; term; qualification.

- A. The Borough Attorney shall be appointed by the governing body for a term of one-year beginning January 1, or as soon thereafter as may be practicable.
- B. He shall be an attorney at law of New Jersey.

§ 44-37. Powers and duties.

- A. The Borough Attorney shall give legal counsel and advice required by the Mayor and Borough Council, and in general shall serve as the legal advisor to the Borough Council on all matters of Borough business. He may represent the Borough in all judicial and administrative matters of Borough business. He may represent the Borough in all judicial and administrative proceedings in which the Borough or any of its officers or agencies, not separately represented, may be a party or have an interest.
- B. In furtherance of his general powers and duties, but without limiting them, the Attorney shall:
 - (1) Draft or approve, as to form and sufficiency, all legal documents, contracts, deeds, ordinances, and resolutions made, executed or adopted by or on behalf of the Borough.
 - (2) With the approval of the governing body, compromise or settle litigation in which the Borough is involved.
 - (3) Render opinions upon questions of law submitted to him by the governing body or any member thereof, with respect to Borough business.

§ 44-38. Compensation.

The salary of the Borough Attorney shall be fixed by the Annual Salary Ordinance,³⁹ plus such costs and expense as he may incur in and about the performance of his duties, and as shall be approved by the governing body.

39. Editor's Note: The currently effective Salary Ordinance is on file in the office of the Municipal Clerk.

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Chapter 50

POLICE DEPARTMENT

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Emergency management — See Ch. 20.

Fire Department — See Ch. 24.

ARTICLE I
General Provisions
[Adopted 2-26-1997 by Ord. No. 5-97]

§ 50-1. Police Department established and continued.

The Department of the municipal government of the Borough designated as the "Police Department of the Borough of Atlantic Highlands," heretofore established, is hereby continued.

§ 50-2. Headquarters; business hours.

A police station, known and designated as the Police Headquarters of the Borough of Atlantic Highlands, is hereby established in the Borough Hall, 100 First Avenue, Atlantic Highlands, New Jersey. The Police Headquarters shall be open for the transaction of police business daily, including Sundays and holidays.

§ 50-3. Functions.

The Police Department's duties and functions shall include but not be limited to:

- A. Preserve the public peace, protect life and property, prevent crime, detect and arrest offenders against the penal laws and ordinances within the Borough, suppress riots, mobs and insurrections, disperse unlawful or dangerous assemblages, and preserve order at all elections and public meetings and assemblages.
- B. Administer and enforce laws and ordinances to regulate, direct, control, and restrict the movement of vehicular and pedestrian traffic, and the use of the streets by vehicles and persons, to protect the safety and facilitate the convenience of motorists and pedestrians.
- C. Remove or cause to be removed all nuisances in the public streets, parks and other public places of the Borough, inspect and observe all places of public amusement or assemblage and all places of business requiring any state or municipal license or permit and report thereon to the appropriate department.
- D. Provide proper police attendance and protection at fires.
- E. Provide for the attendance of its members in court, as necessary for the prosecution and trial of persons charged with crimes and offenses, and cooperate fully with the law enforcement and prosecuting authorities of federal, state and county governments.
- F. Operate appropriate training programs to maintain and improve the police efficiency of the members of the Department.
- G. Administer and enforce rules and regulations for the disposition, conduct and discipline of the Department, subject to the laws of the State of New Jersey.

§ 50-4. Qualifications.

Each applicant for a position in the Police Department shall have the qualifications required by N.J.S.A. 40A:14-122. Each applicant shall comply with the laws of the State of New Jersey pertaining to municipal police. Appointments will be the determination of the Mayor and Council. Each successful appointee shall serve a probationary period commencing after his successful completion of the appropriate training course at an accredited police training academy, or upon his appointment if the appointee has prior police training/

service.

§ 50-5. Probationary period.

- A. Appointees shall serve in a probationary status for a period of one year, during which period their employment and appointment shall be subject to termination at the pleasure of the Mayor and Council.
- B. Whenever a probationary period of service shall have been completed by an appointee to the satisfaction of the Mayor and Council and the appointee shall thereupon have been duly appointed to the office for an indefinite term, the probationary period served shall constitute part of his length of service.
- C. Newly appointed police officers shall complete necessary recruit training during the first year of service as may be required by law.

§ 50-6. Police physician.

There shall be a Police Physician who shall have all of the powers, functions and duties of a Borough Police Physician prescribed by law.

§ 50-7. Special officers. [Amended 10-13-2004 by Ord. No. 14-2004]

The Mayor and Council may appoint special police officers for a term not exceeding one year. Special officers shall be appointed, qualified, and utilized in accord with the standards of N.J.S.A. 40A: 14-146.8 to 146.18. The powers, rights and duties of such officers shall immediately cease at the expiration of the term for which they were appointed, and there is no requirement or obligation of reappointment.

- A. Class 1 Special Officers. They shall be authorized to perform routine traffic details, spectator control, and similar duties. A Class 1 Special Officer shall have the power to issue summonses for disorderly persons, petty disorderly persons offenses, violations of municipal ordinances, and violations of Title 39 of the Revised Statutes. The use of a firearm by a Class 1 Special Officer shall be strictly prohibited and no officer of this class shall be assigned any duties, which may require the carry of, or use of a firearm.
- B. Class II Special Officers. Officers in this class are authorized to exercise the full power and duties of a regular police officer. The use of a firearm by a Class II Special Officer may only be authorized by the Chief of Police upon the successful completion of training and instruction as required by law.

§ 50-8. Responsibility of command. [Amended 5-8-2002 by Ord. No. 3-2002]

- A. Pursuant to N.J.S.A. 40A:14-118, the "appropriate authority" presiding over the operation of the Police Department is the Borough Administrator, or in his absence, the Chairman of the Police Committee. The Chief of Police is under the authority of the appropriate authority. The appropriate authority shall have the authority to establish policies and administrative direction and to issue and amend as necessary Rules and Regulations for the Police Department. All members of the Police Department shall be subject to the Rules and Regulations. The appropriate authority shall be the final authority as to all disciplinary decisions and appeals under the Rules and Regulations. The appropriate authority may delegate the initial hearing process to a Borough Official who in his opinion is qualified to act as a finder of fact, but the final decision rests with the appropriate authority. Nothing herein shall effect the grievance process as contained in the contract between the Borough and the Police Benevolent Association or as provided by law.

- B. Command shall be exercised by rank; in cases of equal rank by length of service in that rank and, where equal, by length of service in the next preceding rank, except when persons of lesser rank or fewer years of service occupy and perform the duties and exercise command and supervisory authority by virtue of a specific assignment from the Chief or as defined in the Rules and Regulations.

§ 50-9. Duties of departmental personnel. [Amended 5-8-2002 by Ord. No. 3-2002]

- A. Sworn Police Officers. There are hereby created the following positions within the Police Department and the general duties of each position. Officers are expected to perform the duties of subordinate ranks when needed or assigned. The filling of any position is solely at the discretion of the Borough Council. All police officers shall be appointed or promoted to higher rank by resolution by the Borough Council. Command shall be exercised by rank; in cases of equal rank by length of service in that rank and, where equal, by length of service in the next preceding rank, except when persons of lesser rank or fewer years of service occupy and perform the duties and exercise command and supervisory authority by virtue of a specific assignment from the Chief or as defined in the Rules and Regulations.

- (1) One position for Chief of Police. The Chief of Police shall be the head of the police force and shall be directly responsible to the Borough Administrator, and the Borough governing body for the efficiency and routine day-to-day operations of the Police Department. The Chief of Police shall pursuant to the policies established by the appropriate authority.
 - (a) Be considered to be on duty at all times and shall not leave the Borough for any extended period of time without first notifying the appropriate authority and receiving approval for the leave of absence.
 - (b) Report immediately to the appropriate authority the death, resignation, proposed discipline or extended absence of any member; and take custody of all equipment issued to such member.
 - (c) Supervise the preparation and presentation of all official matters involving the Police Department in Court and provide for attendance of all necessary witnesses and members.
 - (d) Assist with and assign appropriate investigation to be instituted and written reports to be submitted to the appropriate authority of cases involving personal injury or damage to property whereby the Borough may be claimed to be responsible.
 - (e) Administer and enforce the rules and regulations and special emergency directives for the disposition and discipline of the force and its officers and personnel.
 - (f) Have, exercise, and discharge the functions, powers and duties of the force.
 - (g) Prescribe the duties and assignments of all subordinates and other police personnel.
 - (h) Delegate such of his authority as he may deem necessary for the efficient operation of the force to be exercised under his discretion and supervision.
 - (i) Report at least monthly to the appropriate authority in such form as shall be prescribed by such authority on the operation of the force during the preceding month, and make such reports as may be requested by such authority or the Mayor and Council.
- (2) One position for Captain. The Captain shall serve as the Chief's executive officer and second in command, and shall perform such duties as are directed by the Chief of Police. He shall assist

the Chief of Police in formulating and implementing policy, regulations, goals and objectives of the Police Department and may supervise subordinates on an assigned shift. In the event of a prolonged absence of the Chief of Police, the Captain shall assume the command of the Department as Acting Chief of Police unless such is otherwise determined and assigned by the appropriate authority.⁴⁰

- (3) Sergeant (no more than five). The Sergeant is responsible for supervising police work, directing and assisting in the direction of, or participating in the activities of the Police Department on an assigned shift. He performs those tasks and assignments which are delegated by his superiors. **[Amended 4-28-2010 by Ord. No. 09-2010]**
 - (4) Patrol Officer. The Patrol Officer is responsible for the general law enforcement work involved in the protection of life and property through the enforcement of laws and related preventative and investigative work. A Patrol Officer shall perform all duties which are assigned by his superior officers.⁴¹ **[Amended 4-28-2010 by Ord. No. 09-2010]**
- B. Civilian personnel. The following positions are hereby established within the Police Department. The positions being established are civilian in character, and the persons being appointed to these positions do not have the authority to perform any of the duties of a police officer.
- (1) Police Dispatcher. Police dispatchers, under direction, shall receive and relay messages to police patrol vehicles or to other concerned personnel and, in addition, may operate a teletype machine and a computer terminal for transmitting and receiving all teletype messages. The police dispatcher may be required to perform clerical work of a varied nature and may be required to search prisoners or make security checks.
 - (2) School Crossing Guard. School crossing guards shall be appointed for a term not exceeding one year by the Mayor and Borough Council. To be appointed to the position of school crossing guard, an individual must meet the requirements of N.J.S.A. 40A:9-154.2. A school crossing guard shall be responsible for the control and direction of the vehicular and pedestrian traffic during those time periods of a school day or for any special event or program when assigned in the interest of public safety.
 - (3) Records Clerk. A records Clerk may be appointed by the Chief of Police on either a full- or part-time basis as authorized by the governing body. The records Clerk handles, processes, maintains and distributes department records and reports as required.

§ 50-10. Construal of provisions. [Added 5-8-2002 by Ord. No. 3-2002]

Nothing contained within this article shall:

- A. Prevent the appointment by the Borough Council, or committees or commissions under its supervision, to conduct investigations of the operation of the police force and to delegate to such committees or commissions such powers of inquiry as the Borough Council deems necessary.
- B. Prevent the Borough Council from conducting a hearing or investigation authorized by law.
- C. Prevent the Mayor, Borough Council, Borough Administrator, or Police Committee from examining,

40. Editor's Note: Former Subsection C, One position for Lieutenant, which immediately followed this subsection, was repealed 4-28-2010 by Ord. No. 09-2010.

41. Editor's Note: Former Subsection F, Special officers, which immediately followed this subsection, was deleted 2-23-2011 by Ord. No. 03-2011.

at any time, the operations of the police force or the performance of any officer or member.

- D. Infringe on or limit the power of the Mayor, Borough Administrator, Borough Council or Police Committee to act to provide for the health, safety or welfare of the municipality in any emergency situation through special emergency directives.
- E. Infringe on or limit the authority of the Mayor and Council to increase, change, or reduce the number and rank structure of the Police Department due to budgetary or efficiency reasons or for any other reason within its authority.

§ 50-11. Special duty assignments for police officers. [Added 5-8-2002 by Ord. No. 6-2002]

- A. Approval of assignment. Any and all extra or special duty assignments by police officers shall be determined and approved by the Chief of Police or his designee. No police officer shall perform special duty assignments for private or non-law enforcement entities for compensation other than through the procedure and authority in this article. The Chief or designee shall obtain such information as he determines necessary and is authorized to approve such special duty police assignments. The Chief or designee may deny the assignment or use of police officers or vehicles and/or impose any condition or requirement as in his sole discretion and determination are in the best interest of the Borough and/or police officers or public safety. The Chief or designee shall be guided by the nature of the assignment and may refuse to approve those with conflict of interest and/or significant risk of injury. The Chief or designee may assign a police vehicle or appropriate equipment for use in performing special duty if it is determined that the use is necessary to perform the contracted duty. This article does not apply to assignments or work performed for or at the direction of any Special Task Force or similar assignments by the Monmouth County Prosecutor or other law enforcement agencies, except that payments to the officers performing such assignments may be made by such law enforcement agencies through the Borough Special Duty Police Fund subject to the approval of the Municipal Finance Officer.
- B. Status of assignment.
 - (1) The work to be performed shall be considered "special assignments for independent contractors" and will not be considered a direct assignment. The taking of any and all special duty assignments shall be on a voluntary basis in accordance with a fair and reasonable system established and administered by the Chief or designee.
 - (2) Officers engaged in special duty assignments shall be deemed on-duty for all purposes, including but not limited to workers' compensation, public liability, and third-party claims for damages, and the officers performing such duties shall conform to police department rules, regulations and procedures, and directives of superior officers. All special duty assignments shall be contracted for in writing by the completion of a contract form, which contract shall be kept on record.
 - (3) All special duty assignments shall be within Atlantic Highlands, unless specific written approval is given by the Chief to the officer to work outside of the Borough. The Chief may contact adjoining municipal police departments to see if their officers are willing to perform such special assignments outside of Atlantic Highlands, before allowing Atlantic Highlands officers to perform assignments outside of Atlantic Highlands. This does not apply to assignments crossing municipal boundaries in which the work is partially performed in Atlantic Highlands.
 - (4) Private parties or attorneys who utilize police officers in civil cases by request or subpoena will be responsible to reimburse the Borough for the costs incurred for the officers' time while

complying with the subpoena. The time incurred will be billed by the Borough to the requesting private attorney or party at the rate established for special duty assignments. Officers will continue to be compensated by the Borough as per past practice and the Collective Bargaining agreement for time responding to subpoena. This section may not apply to internal administrative or disciplinary matters in which reimbursement to the Borough may not be applicable.

C. Payments.

- (1) All payments for special duty assignments shall be deposited in and made through the Special Duty Police Fund established by the Municipal Financial Officer, from which payment shall be made to the individual police officers performing such service. All payments from the Trust Fund shall be made to the police officers in a timely manner as provided by law, subject to required deductions; the administrative fee shall be retained by the Borough. Any dispute between the contractor and the police officer on assignment as to service required or payment due shall be decided by the Chief and his decision shall be final and binding.
- (2) In the event police officers from other municipalities perform special duty assignments within the Borough due to the nonavailability of local officers for such duties, it shall be the responsibility of those officers from other municipalities to arrange payment for services direct from the utilizing party or through their police department.
- (3) All requests by private and/or non-law enforcement parties for special duty services shall be made in writing at least two business days before the services are to commence, except that in the event of exigent circumstances, this notice may be waived by the Chief or designee. The Chief or the Municipal Finance Officer may request or require the requesting party to deposit with the Borough, or have on deposit, in the Special Duty Police Fund, sufficient funds to pay for the services requested, including all administrative charges. The amount required to be deposited shall be subject to the determination and approval of the Chief or his designee in their discretion. Parties that utilize special duty services on a regular basis may be required to maintain a minimum balance of the average weekly expenditure in the Fund. The Chief or designee shall have the authority to determine the appropriate minimum balance for a particular party utilizing services to ensure adequate funds are available to timely pay the officers and administrative fees for services provided. Otherwise, payment for services rendered is due immediately upon the Borough's submission for an invoice.
- (4) Services may be denied to any party in the discretion of the Chief or his designee due to uncertainty as to funds to cover the services or due to delinquency in payment for past services rendered. Delinquent parties shall be liable for interest at 18% on any funds noticed to the party as being delinquent together with any damages or attorney fees or costs incurred by the Borough by reason of their delinquency.
- (5) Any assignment canceled by a private party on less than four hours notice shall be charged against the party for the minimum hours for the assignment.
- (6) The hourly rate payable to the police officers shall be as provided in Chapter 168, Fees, Article II. In addition to the hourly rates paid to the officers, such hourly amount as is provided in Chapter 168, Fees, Article II, shall be added and paid to the Borough as a surcharge to reimburse the Borough for administrative costs incurred in support of special duty assignments for police officers. The Chief or designee may waive the minimum hours on a particular assignment, after consultation with the officers involved in the assignment, should be determine this is in the interest of the Borough. In continuing assignments, the Chief may waive the hourly minimum

on a continuing basis, after consultation with PBA. The Chief may waive the administrative fee for assignments for municipalities or governmental agencies when appropriate in his discretion for regional events or mutual aid type situations. **[Amended 1-26-2005 by Ord. No. 02-2005; 2-23-2011 by Ord. No. 03-2011]**

D. Emergencies.

- (1) The Chief or designee has the authority to order any police officer to vacate or terminate any special duty assignment in response to emergent situations or whenever the assignment creates an unacceptable risk to health, safety and welfare of the police officer and/or public in the sole determination and discretion of the Chief or designee. The contractor shall not be responsible for any compensation for the time the police officer is away from the special duty assignment, and shall have no claim for any costs or damages against the Borough, the Chief, or any police officer arising from the termination of any special duty assignment other than the prorated return of any fee prepaid to the Borough for the time.
- (2) The Borough shall be responsible to provide necessary insurance coverage required by law, including but not limited to workers' compensation, public liability, and claims for damages for personal injury including death or damage to property which may arise as a result from the municipality's performance under the contract.

ARTICLE II

Police Chaplain**[Adopted 9-26-2018 by Ord. No. 13-2018]****§ 50-12. Position(s) created.**

The position of Police Chaplain for the Borough of Atlantic Highlands Police Department is hereby created in accordance with N.J.S.A. 40A:14-141. The position will be a volunteer position. The number of Police Chaplains appointed for any given year shall be determined by the Chief of Police and accepted by the passage of a resolution of the Mayor and Council. The Police Chaplain(s) shall be under the direction of the Chief of Police. The Police Chaplain(s) may be removed from the position by the Chief of Police or the Mayor and Council at any time, without cause or hearing.

§ 50-13. Qualifications.

Any person appointed as Police Chaplain shall be ordained clergy in good standing in the religious body from which he/she is selected. In addition, the Chief of Police can appoint a faith-based police officer to function in similar capacity as a Chaplain Liaison Officer/Chaplain. The Police Chaplain(s) shall have basic training and shall be a certified Police Chaplain credentialed in accordance with the rules and regulations of the Borough of Atlantic Highlands Police Department and shall be qualified under N.J.S.A. 40A:14-141.

§ 50-14. Duties.

The duties of the Police Chaplain(s) shall include, but not be limited to, assisting the Borough of Atlantic Highlands Police Department in death notifications, station house adjustments, community outreach and any other duties that may be assigned by the Chief of Police.

§ 50-15. Rank and salary.

Any person appointed as Police Chaplain shall serve in that capacity without rank or salary.

§ 50-16. Term of office.

The Police Chaplain(s) shall be appointed by resolution for a one-year term, beginning January 1 and ending December 31 each year.

§ 50-17. Appointment.

All applicants for the position of Police Chaplain shall be reviewed by the Chief of Police to determine the applicants' qualifications in accordance with this article. The Chief of Police shall identify persons that he/she believes meet the qualifications of N.J.S.A. 40A:14-141 and the character standards, rules, and regulations of the Borough of Atlantic Highlands Police Department. Prior to December 15 of each year, the Chief of Police shall make recommendations to the Mayor regarding the number of Police Chaplains to be appointed and the person(s) whom the Chief of Police recommends be appointed as Police Chaplain(s) for the following year. The Mayor shall appoint the Police Chaplain(s) in accordance with this article with the advice and consent of the Borough Council.

ATLANTIC HIGHLANDS CODE

Chapter 55

POLITICAL CONTRIBUTIONS

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Disclosure in Major Zoning Variance Applications
[Adopted 3-23-2005 by Ord. No. 05-2005]**§ 55-1. Short title.**⁴²

This article shall be known and may be cited as the "Contribution Disclosure Ordinance."

§ 55-2. Definitions.

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

APPLICATION CHECKLIST — The list of submission requirements adopted by ordinance and provided by the municipal agency to a developer pursuant to N.J.S.A. 40:55D-10.3.

BOROUGH — The Borough of Atlantic Highlands as a municipal entity, any elected official, officer, employee, agent, department, board or commission of the Borough of Atlantic Highlands.

CAMPAIGN CONTRIBUTION — Any contribution to an Atlantic Highlands political campaign, Monmouth County political campaign, and/or pass-through campaign contribution as defined herein, whether in the form of money, service (with or without compensation), or pledge, loan, gift, subscription, advance or transfer of money or other thing of value, including any item of real property or personal property, tangible or intangible including without limitation, any in-kind contributions, or purchases of tickets, advertisements or the like, directly or indirectly, made to or on behalf of any candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or any elected or appointed official. "Campaign contribution" also includes any pledge, promise or other commitment or assumption of liability to make such transfer. For purposes of reports required under the provisions of this article, any such commitment or assumption shall be deemed to have been a contribution upon the date when such commitment is made or liability assumed.

CONTRIBUTION DISCLOSURE STATEMENT — A list specifying the amount, date, and the recipient of any and all campaign contributions made to or on behalf of any candidate, candidate committee, joint candidates committee, political committee, continuing political committee or political party committee of, or pertaining to, this municipality, made up to one year prior to filing the variance application and/or during the pendency of the application process, and required to be reported pursuant to N.J.S.A. 19:44A-1 et seq. The contribution disclosure statement shall be provided as a required document with any application for a major zoning variance application.

DEVELOPER — A developer as defined by N.J.S.A. 40:55D-4; "developer" shall mean any individual or entity who makes any application to the Borough's Planning Board for any subdivision, site plan approval or variance relief, regardless of how minor; or who owns or is the contract purchaser of any property that is the subject of any such application, or who owns or is the contract purchaser of any property located within a designated redevelopment area, regardless of whether the property has been specifically designated as being in need of redevelopment; or who engages directly or indirectly in negotiations with the Borough relating to, or has in fact entered into, a developer's agreement pursuant to any redevelopment plan or the Municipal Land Use Law, or who owns or is the contract purchaser of, any property that is the subject of, or would directly be affected by a proposed change in zoning or of the Master Plan, and in the case of a developer who is an individual, his or her spouse and any child living at home, and any entities of which any of them are principals holding a 5% or greater interest; and in the case of a developer that is an entity, the term shall also include each and every principal of the said entity who has an ownership interest in

42. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

excess of 5% in the entity, or in any parent or subsidiary of the entity, and their spouses, if any, and any child living at home.

DEVELOPER'S AGREEMENT — Any agreement entered into between a developer and the Borough relating to an application or plan to develop or redevelop property within the Borough of Atlantic Highlands.

DEVELOPMENT MATTER — Any application for development pending before the Borough Planning Board of the Borough, any application or proposal to change the Borough's zoning regulations or Master Plan, or any proposed development pursuant to a redevelopment plan, or any developer's agreement. With respect to a developer, the term "relating to a development matter" shall mean that the developer is the applicant, owner or contract purchaser of property that is the subject of an application for development pending before the Borough Planning Board of the Borough, or of any application or proposal to change the Borough's zoning regulations or Master Plan, or of any application for development pursuant to a redevelopment plan or otherwise a party to any developer's agreement. With respect to a development professional, the term "relating to a Development Matter" shall mean that the development professional has rendered or is rendering professional services for a developer in connection with that development matter.

DEVELOPMENT PROFESSIONAL — Any licensed professional, including but not limited to attorneys, architects, engineers, surveyors and planners, or any entity that provides such professional services, who is representing a developer or who has performed professional services for a developer relating to a development matter in the Borough of Atlantic Highlands, and any principal owning not less than a 5% interest in the entity.

ENTITY — Any corporation, professional corporation, joint venture, general or limited partnership, trust or limited liability company, or subsidiary or parent of any of the foregoing;

PLANNING BOARD — The combined Zoning Board of Adjustment and Planning Board, which is referred to in the Borough of Atlantic Highlands as the "Planning Board."⁴³

REDEVELOPMENT PLAN — Any plan, or amendment thereto, adopted by ordinance of the Mayor and Council pursuant to and in accordance with Redevelopment and Housing Law, Chapter 79, P.L. 1992.

§ 55-3. Disclosure requirements.

- A. Any applicant for a variance pursuant to N.J.S.A. 40:55D-70(d) or a variance pursuant to N.J.S.A. 40:55D-70c in conjunction with any application for a subdivision not considered a minor subdivision pursuant to local ordinance or a site plan not considered a minor site plan pursuant to local ordinance as well as any application for a subdivision not considered a minor subdivision pursuant to local ordinance or site plan not considered a minor site plan pursuant to local ordinance requiring waivers or exceptions pursuant to N.J.S.A. 40:55D-51 shall include in the application contribution disclosure statements for all developers; all associates of said developers who would be subject to disclosure pursuant to N.J.S.A. 40:55D-48.1 or 40:55D-48.2; and all development professionals who apply for or provide testimony, plans, or reports in support of said variance and who have an enforceable proprietary interest in the property or development which is the subject of the application or whose fee in whole or part is contingent upon the outcome of the application. Regardless of whether the owner of the property which is the subject of the variance application falls in any of the categories established in the preceding sentence, the applicant shall include in the application a contribution disclosure statement for said owner.
- B. During the pendency of the application process until final site plan approval is granted, any applicant

43. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

required to comply with this article shall amend its contribution disclosure statements to include continuing disclosure of all contributions within the scope of disclosure requirement of the above subsection.

- C. Contribution disclosure statements as defined in § 55-2 shall be included as an element of the application checklist submitted with an application for variances pursuant to N.J.S.A. 40:55D-70(d), as well as for relief pursuant to N.J.S.A. 40:55D-70(c) or N.J.S.A. 40:55D-51 in applications for site plan and subdivision approval not considered to be minor site plans or minor subdivisions pursuant to local ordinance.
- D. An application shall not be deemed complete by the administrative official or accepted for public hearing by the Borough until the required contribution disclosure statements are submitted.
- E. All contribution disclosure statements shall be available in the office of the Planning Board Secretary for review by any member of the public.

§ 55-4. Intent of disclosure statement.

It is the intent of this article that the Disclosure Statement shall serve to inform the public and not serve as evidence relevant to the decision criteria for variance applications pursuant to N.J.S.A. 40:55D-70(d) as well as for relief pursuant to N.J.S.A. 40:55D-70c or N.J.S.A. 40:55D-51 in applications for site plan and subdivision approval not considered to be minor site plans or minor subdivisions pursuant to local ordinance.

ARTICLE II

Conflicts of Interest**[Adopted 3-23-2005 by Ord. No. 06-2005]****§ 55-5. Definitions.**

For the purposes of this article, the following terms shall have the meanings indicated:

AGREEMENT TO PURCHASE GOODS OR SERVICES — Any agreement for the rendering of professional services to or on behalf of the Borough and any agreement whether by contract or purchase order, for the sale of any goods or nonprofessional services to the Borough, as defined herein, and without regard to whether the said agreement or contract is awarded pursuant to and in accordance with the open public bidding requirements of N.J.S.A. 40A:11-1 et seq.⁴⁴

ALCOHOLIC BEVERAGE LICENSEE — Any individual or entity who owns or is negotiating for the purchase of, or has an application pending for a license or permit for the sale of alcoholic beverages within the Borough of Atlantic Highlands, whether or not the license is active, and any person or entity that is the owner of any property on which the license is currently active, or any property to which an application is pending with the Borough for the place-to-place transfer of the license. In the case of any alcoholic beverage licensee who is an individual, the term shall also include the individual's spouse, if any, and any child living at home, as well as any entity by whom any of them are employed or in which any of them has an ownership interest in excess of 5%. In the case of any alcoholic beverage licensee that is an entity, the term shall also include each and every principal of the said entity who has an ownership interest in excess of 5% in the entity, or any parent or subsidiary of the entity, and their spouses, if any, and any child living at home.

BOROUGH — In addition to the Borough of Atlantic Highlands as a municipal entity, any elected official, officer, employee, agent, department, board or commission of the Borough of Atlantic Highlands.

CAMPAIGN CONTRIBUTION — Any contribution to an Atlantic Highlands political campaign, Monmouth County political campaign, and/or pass-through campaign contribution as defined herein, whether in the form of money, service (with or without compensation), or pledge, loan, gift, subscription, advance or transfer of money or other thing of value, including any item of real property or personal property, tangible or intangible including without limitation, any in-kind contributions, or purchases of tickets, advertisements or the like, directly or indirectly, made to or on behalf of any candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or any elected or appointed official. "Campaign contribution" also includes any pledge, promise or other commitment or assumption of liability to make such transfer. For purposes of reports required under the provisions of this article, any such commitment or assumption shall be deemed to have been a contribution upon the date when such commitment is made or liability assumed.

DEVELOPER — A developer as defined by N.J.S.A. 40:55D-4, and shall mean any individual or entity who makes any application to the Borough's Planning Board for any subdivision, site plan approval or variance relief, regardless of how minor; or who owns or is the contract purchaser of any property that is the subject of any such application, or who owns or is the contract purchaser of, any property located within a designated redevelopment area, regardless of whether the property has been specifically designated as being "in need of redevelopment"; or who engages directly or indirectly in negotiations with the Borough relating to, or has in fact entered into, a developer's agreement pursuant to any redevelopment plan or the Municipal Land Use Law, or who owns or is the contract purchaser of, any property that is the subject of, or would directly be affected by a proposed change in zoning or of the Master Plan, and in the case of a

44. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

developer who is an individual, his or her spouse and any child living at home, and any entities of which any of them are principals holding a 5% or greater interest; and in the case of a developer that is an entity, the term shall also include each and every principal of the said entity who has an ownership interest in excess of 5% in the entity, or in any parent or subsidiary of the entity, and their spouses, if any, and any child living at home.

DEVELOPER'S AGREEMENT — Any agreement entered into between a developer and the Borough relating to an application or plan to develop or redevelop property within the Borough of Atlantic Highlands.

DEVELOPMENT MATTER — Any application for development pending before the Borough Planning Board of the Borough, any application or proposal to change the Borough's zoning regulations or Master Plan, or any proposed development pursuant to a redevelopment plan, or any developer's agreement. With respect to a developer, the term "relating to a development matter" shall mean that the developer is the applicant, owner or contract purchaser of property that is the subject of an application for development pending before the Borough Planning Board of the Borough, or of any application or proposal to change the Borough's zoning regulations or Master Plan, or of any application for development pursuant to a redevelopment plan or otherwise a party to any developer's agreement. With respect to a development professional, the term "relating to a development matter" shall mean that the development professional has rendered or is rendering professional services for a developer in connection with that development matter.

DEVELOPMENT PROFESSIONAL — Any licensed professional, including but not limited to attorneys, architects, engineers, surveyors and planners, or any entity that provides such professional services, who is representing a developer or who has performed professional services for a developer relating to a development matter, and any principal owning not less than a 5% interest in the entity.

ENTITY — Any corporation, professional corporation, joint venture, general or limited partnership, trust or limited liability company, or subsidiary or parent of any of the foregoing.

PASS-THROUGH CAMPAIGN CONTRIBUTIONS — Any contribution, whether in the form of money, service (with or without compensation), or pledge, loan, gift, subscription, advance or transfer of money or other thing of value, including any item of real property or personal property, tangible or intangible, including without limitation, any in-kind contributions, purchase of tickets, advertisements or the like, directly or indirectly to support any campaign committee or election fund of any candidate for, or holder of the office of, Mayor or Council of the Borough, or to any municipal or party committee or political club or organization within the Borough, that is received from the election fund or other campaign account of any elected official or candidate for any office other than Mayor or Council of the Borough, or from any county political organization, county campaign committee or political action committee or fund within or without the County of Monmouth.

PLANNING BOARD — The combined Zoning Board of Adjustment and Planning Board which is referred to in the Borough of Atlantic Highlands as the "Planning Board."⁴⁵

REDEVELOPMENT PLAN — Any plan, or amendment thereto, adopted by ordinance of the Mayor and Council pursuant to and in accordance with Redevelopment and Housing Law, Chapter 79, P.L. 1992.

VENDOR — Any individual person or entity who negotiates, bids or otherwise seeks to enter into an agreement to purchase goods or services. In the case of any vendor who is an individual person, the term shall also include the individual's spouse, if any, and any child living at home, as well as any entity by whom any of them are employed or in which any of them have an ownership interest in excess of 5%. In the case of any vendor who is an entity, the term shall also include each and every principal of the said entity who has an ownership interest in excess of 5% in the entity, or any parent or subsidiary of the entity,

45. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

and their spouses, if any, and any child living at home.

§ 55-6. Disclosure of personal interest.

Any official or employee who has or may have any interest, direct or indirect, in any measure, indebtedness or action and who participates in discussion with or gives an official opinion to the Borough Council or to any municipal agency, board or authority with respect thereto shall disclose on the record of the Borough Council or agency, board or authority the nature and extent of such interest.

§ 55-7. Prohibited activities.

- A. No elected municipal official appointed municipal official, or municipal employee shall engage in political activity during his or her hours of duty with respect to any candidate.
- B. No elected municipal officer, appointed municipal official or municipal employee shall use or permit others to use the facilities of the Borough for the preparation, storage or distribution of campaign material.
- C. Nothing in this article shall be construed to prevent an elected official from campaigning, or engaging in political activity, at any time.
- D. No appointed or elected municipal official or employee shall use or permit others to use the facilities of the Borough for the conduct of private business. With the approval of the Mayor and Council, nonprofit public service and civic organizations shall be allowed to use such Borough facilities as may be deemed appropriate and as may be permitted pursuant to law.
- E. No elected municipal official, appointed municipal official or municipal employee shall, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the Borough, nor shall he/she use such information to advance the financial or other private interest of himself/herself or others.

§ 55-8. Ineligibility of elected officials to participate in or vote on specific matters involving certain campaign contributors.

- A. Any elected official who has received any campaign contribution from any developer in excess of the limits set forth in § 55-10B hereof shall be ineligible to participate in discussions or negotiations relating to, or cast any vote with respect to any development matter relating to that developer.
- B. Any elected official who has received any campaign contribution from any development professional in excess of the limits set forth in § 55-10B hereof, shall be ineligible to participate in discussions or negotiations relating to, or cast any vote with respect to any development matter with respect to which the development professional has performed any professional service.
- C. Any elected official who has received any campaign contribution from any Alcoholic Beverage Control Licensee in excess of the limits set forth in § 55-10B hereof, shall be ineligible to participate in, be kept informed of, or cast any vote with respect to, any application by the alcoholic beverage control licensee for an alcoholic beverage control license or permit relating to said alcoholic beverage control licensee, or with respect to any hearings relating to same, or with respect to any investigations relating to same, or with respect to any local or state enforcement proceedings seeking to impose fines, suspensions or revocations relating to the same.

§ 55-9. General ineligibility of any elected official who receives excess county campaign

contributions or pass-through campaign contributions to participate or vote on certain categories of matters.

Any elected official who has received during the preceding calendar year including during years preceding his or her election, pass-through campaign contributions from any single source in excess of \$1,000, or who has during any of the said preceding year received combined pass-through campaign contributions from all sources in excess of 20% of the total amount of all campaign contributions received by that elected official during that same calendar year, shall be ineligible to participate in, or cast a vote on any of the following categories of matters for the remainder of that calendar year and for a period of three additional calendar years following that calendar year:

- A. The award of any agreement for the sale of goods or services to the Borough, and shall be further barred from voting on the grant of change orders with respect to publicly bid contracts or agreements; with respect to each and every vote as to which the Mayor or member of the Council is ineligible by virtue of this provision, the reasons for the abstention shall be set forth on the record, recorded in the minutes, and noted on the resolution awarding the contract or agreement for the sale of goods and services;
- B. Any development matter and any appointment to the Planning Board of the Borough of Atlantic Highlands;
- C. Any matter relating to or involving any alcoholic beverage licensee.

§ 55-10. Atlantic Highlands and county campaign contribution limits affecting vendor eligibility and conflicts of interest.

- A. Campaign contribution limits affecting the eligibility of vendors, pursuant to §§ 55-15 and 55-16 of the Code of the Borough of Atlantic Highlands, to enter into or be paid pursuant to agreements for the purchase of goods or services are as follows:
 - (1) Any vendor who is an individual person as defined herein may contribute a maximum of \$400 annually each for any purpose to any candidate, for Mayor or council, or \$500 to Borough of Atlantic Highlands party committee or Monmouth County party committee, or to a PAC referenced in this article, without violating this article.
 - (2) Any vendor who is an entity as defined herein may not contribute for any purpose in excess of \$2,500 annually to all Atlantic Highlands candidates and officeholders who have the ultimate responsibility for the award of a contract, and all Atlantic Highlands or Monmouth County political parties and PACs referenced in this article combined, without violating this article.
- B. Campaign contribution limits affecting the eligibility of elected officials to participate in or vote on specific matters involving development matters or alcoholic beverage licensees are as follows:
 - (1) Any candidate for the office of Mayor or council who receives a campaign contribution in excess of \$400 from any developer or development professional during a single calendar year shall be ineligible to vote or participate in matters relating to said developer or development professional as provided in § 55-8A or B, respectively.
 - (2) Any candidate for the office of Mayor or Council who receives a campaign contribution in excess of \$400 from any alcoholic beverage licensee during a single calendar year shall be ineligible to vote or otherwise participate in matters involving the said alcoholic beverage licensee as provided in § 55-8C.

- C. The limits set forth in Subsection B shall apply jointly to all candidates for Mayor and/or Council, unless said candidates maintain entirely separate election fund accounts and run entirely uncoordinated campaigns in which case the limits set forth in Subsection B shall apply to each individually run, uncoordinated campaign.

§ 55-11. Contributions made prior to effective date.

Notwithstanding any term contained herein to the contrary, no campaign contributions made prior to the effective date of this article shall be considered in calculating the campaign contribution limits set forth in §§ 55-9 and 55-10 hereof.

§ 55-12. Reporting obligations of candidates for office of Mayor or Council.

- A. Each and every candidate for the Office of Mayor or Council within the Borough of Atlantic Highlands shall file with the Municipal Clerk a true and correct copy of each and every campaign finance report they are required to file with the Election Law Enforcement Commission, and shall do so not later than the date that said report is due to be filed with the New Jersey Election Law Enforcement Commission.
- B. In connection with each campaign report submitted to the Municipal Clerk pursuant to Subsection A above, each candidate for the office of Mayor or Council shall attach a supplemental certification, on a form to be provided by the Municipal Clerk, pursuant to which the candidate shall certify the following:
- (1) That he or she has personally inspected the records of contributions made to his or her campaign account or election fund;
 - (2) That the information contained on the attached report is, after due inquiry, accurate in all material respects;
 - (3) Identifying: each and every individual who either individually or in combination with his or her spouse, or any child living in the same household, or any corporation, professional corporation, limited liability company or partnership of which any of them are principals owning an interest of 5% or greater, from whom he or she has received a campaign contribution cumulatively in excess of \$400 during that calendar year; and each and every pass-through campaign contribution, regardless of amount, he or she has received from any political action committee, county or municipal committee or political club, or from any election fund relating to any public question or from any election fund of any candidate for an office.

§ 55-13. Curing violations; return of excess contributions.

Any vendor, developer, development professional and alcoholic beverage licensee may cure a campaign contribution made in excess of the limits set forth in § 55-9 or 55-10 of this article, if, within 45 days after the general election during the calendar year in which the excess campaign contribution was made, said vendor, developer, development professional or alcoholic beverage licensee notifies the Chief Financial Officer and Municipal Clerk in writing that it has received a reimbursement of a contribution in excess of that allowed in § 55-9 or 55-10, and by attaching a true and correct copy of the check received in reimbursement.

ARTICLE III

Award of Professional Contracts
[Adopted 3-23-2005 by Ord. No. 07-2005]**§ 55-14. Definitions.**

For the purposes of this article, the following terms shall have the meanings indicated:

AGREEMENT TO PURCHASE GOODS OR SERVICES — Any agreement for the rendering of professional services to or on behalf of the Borough and any agreement, whether by contract or purchase order, for the sale of any goods or nonprofessional services to the Borough, as defined herein, and without regard to whether said agreement or contract is awarded pursuant to and in accordance with the open public bidding requirements of N.J.S.A., 40A:11-5, et seq.

BOROUGH — The Borough of Atlantic Highlands as a municipal entity, and any elected official, officer, employee, agent, department, board or commission of the Borough of Atlantic Highlands.

CAMPAIGN CONTRIBUTION — Any contribution to an Atlantic Highlands political campaign, Monmouth County political campaign, and/or pass-through campaign contribution as defined herein, whether in the form of money, service (with or without compensation), or pledge, loan, gift, subscription, advance or transfer of money or other thing of value, including any item of real property or personal property, tangible or intangible including, without limitation, any in-kind contributions, or purchases of tickets, advertisements or the like, directly or indirectly, made to or on behalf of any candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or any elected or appointed official. "Campaign contribution" also includes any pledge, promise or other commitment or assumption of liability to make such transfer. For purposes of reports required under the provisions of this article, any such commitment or assumption shall be deemed to have been a contribution upon the date when such commitment is made or liability assumed.

ENTITY — Any corporation, professional corporation, joint venture, general or limited partnership, trust or limited liability company, or subsidiary or parent of any of the foregoing.

PASS-THROUGH CAMPAIGN CONTRIBUTIONS — Any contribution, whether in the form of money, free service or pledge, including without limitation, any in-kind contributions, or purchases of tickets, advertisements or the like, directly or indirectly, to support any political campaign committee or election fund of any candidate for, or holder of any elected office of the Borough, or to any municipal or party committee or political club or organization within the Borough, that is received from the election fund or other campaign account of any elected official or candidate for any office other than Mayor or Council of the Borough, or from any county political organization, county campaign committee or political action committee or fund within or without the County of Monmouth.

PROFESSIONAL BUSINESS ENTITY — Any individual person or entity who negotiates, bids or otherwise seeks to enter into an agreement to purchase goods or services as defined herein. In the case of any professional business entity who is an individual person, the term shall also include the individual's spouse, if any, and any child living at home, as well as any entity by whom any of them are employed or in which any of them have an ownership interest in excess of 5%. In the case of any professional business entity who is an entity, the term shall also include each and every principal of the said entity who has an ownership interest in excess of 5% in the entity, or any parent or subsidiary of the entity, and their spouses, if any, and any child living at home.

§ 55-15. Prohibition on awarding contracts for sale of goods or services to certain campaign

contributors.

Any other provision of law to the contrary notwithstanding, the Borough shall not enter into any agreement to purchase goods or services, or make any payment pursuant to any such agreement with any professional business entity that has solicited or made any campaign contribution in excess of the limits specified in § 55-10 of this chapter, during the three-year period immediately preceding the date of the contract or agreement, or during the term of any such agreement to purchase goods or services.

§ 55-16. Limits on political campaign contributions by vendors to Borough.

No professional business entity shall knowingly solicit on behalf of, or make any campaign contribution in excess of the limits specified in § 55-10 of this chapter during the time in which negotiations are pending for, or during the term of, any agreement to purchase goods or services.

§ 55-17. Party responsible for award of agreement to purchase goods and services.

For purposes of this article, the office that is considered to have ultimate responsibility for the award of an agreement to purchase goods and services shall be the Borough Council, as defined in Chapter 1-2 of the Revised General Ordinances of the Borough of Atlantic Highlands.⁴⁶ However, the restrictions of this article apply to all boards, commissions or agencies of the Borough whose appointments of professionals either require approval of the Borough Council or whose operating funds are subject to appropriation by the Borough Council.

§ 55-18. Professional business entities to certify their compliance with the Borough's restrictions on campaign contributions; obligation is continuing.

Prior to issuing any purchase order or awarding to any professional business entity an agreement to purchase goods and services, or making any payment pursuant to the same, or granting any change order in connection therewith, the Borough shall require that the professional business entity first certify by way of submitting a sworn statement to the Borough's Director of Purchasing as defined in § 60-4 of the Code of the Borough of Atlantic Highlands, in language to be approved by the Borough Attorney, in which the entity shall verify that it has not knowingly made any campaign contribution in excess of the limits set forth in § 55-10 of this chapter, and that it has not otherwise violated § 55-16 hereof. This certification shall be in addition to any other certification that may be required by any other provision of law. The Borough shall keep the original of each such sworn statement on file. Notwithstanding anything contained herein to the contrary, the professional business entity shall have a continuing duty to report immediately to the Borough any campaign contributions made in violation of this article that occur during any time that an agreement to purchase goods or services is in effect, or that occur during pending negotiations or bidding by the professional business entity to enter into such an agreement.

§ 55-19. Refusal to certify compliance with restrictions on campaign contributions or submission of false certification.

In addition to such other penalties as may be provided by law, any professional business entity who, after reasonable notice of the consequences thereof, refuses or otherwise fails to provide the certification required herein, or who knowingly files a false certification, shall be disqualified from eligibility for future agreements to purchase goods or services with the Borough until such time as the Mayor and Council adopt a resolution determining that the professional business entity may be eligible or otherwise should be paid for services rendered or goods sold to the Borough. Any professional business entity may appeal to the

46. Editor's Note: So in original.

Mayor and Council from a determination by the Borough as being disqualified.

§ 55-20. Contributions made prior to effective date.

Notwithstanding any term contained herein to the contrary, no professional business entity shall be required to report campaign contributions made prior to the effective date of this article, and the Borough in determining the entity's eligibility pursuant to this article shall consider no such campaign contributions.

§ 55-21. Curing violations; return of excess contributions.

Any professional business entity may cure a campaign contribution made in excess of the limits set forth in § 55-10 of this chapter, within 45 days after the general election during the calendar year in which the excess campaign contribution was made. Said entity shall notify the Borough in writing that it has received a reimbursement of a contribution in excess of that allowed in § 55-10 of this chapter, and by attaching a true and correct copy of the cancelled check received in reimbursement.

Chapter 59**PUBLIC WORKS, DEPARTMENT OF**

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 12-21-2016 by Ord. No. 12-2016. Amendments noted where applicable.]

§ 59-1. Establishment; Superintendent.

There is hereby established a Department of Public Works, the head of which shall be the Superintendent of Public Works. The position of Superintendent is an at-will management position without a fixed term, created as per N.J.S.A. 40A:60-6b(3) and to be appointed as a Department Head pursuant to N.J.S.A. 40A:60-5g. The Superintendent, after five years' continuous service, shall be entitled to such tenure of office as specified in N.J.S.A. 40A:9-154.6. The Superintendent shall report to and accept direction from the Borough Administrator. The Superintendent shall be responsible for organizing, scheduling, directing, and coordinating the activities and programs of the various divisions of the Department and their personnel. The Superintendent is not required to be a Borough resident.

§ 59-2. Organization; divisions.

Within the Department, there shall be the following divisions. The Borough Administrator may assign such supervisors and personnel to the Department and each division as the Administrator deems appropriate:

- A. Streets.
- B. Building and Grounds.
- C. Fleet Maintenance.
- D. Sanitation and Recycling.
- E. Water and Sewer.
- F. Harbor.

§ 59-3. Division of Streets.

The Division of Streets shall generally be responsible as follows:

- A. Maintain and repair the municipal streets, roads, parking lots, culverts, and drainage systems, including installing and maintaining public and traffic signing, traffic markers and lines.
- B. Clear and remove snow and ice from streets, and clear and remove leaves and debris from public streets.

§ 59-4. Division of Buildings and Grounds.

The Division of Buildings and Grounds and shall generally be responsible as follows:

- A. Maintain and repair Borough parks and Borough open spaces.
- B. Maintain and repair Borough buildings and properties as directed by the Administrator or Superintendent.

§ 59-5. Division of Fleet Maintenance.

The Division of Fleet Maintenance shall generally be responsible as follows:

- A. Repair and maintain the Borough's motor vehicles and equipment.
- B. Participate in, review, and make recommendations of vehicle and equipment purchases and replacements.
- C. Operate and maintain the Borough garage and maintain an adequate supply of parts and equipment.

§ 59-6. Division of Sanitation and Recycling.

The Division of Sanitation and Recycling shall generally be responsible as follows:

- A. Collect and dispose of all refuse, trash and solid waste authorized to be collected and disposed of.
- B. Make adequate arrangement for the collection and disposal of recyclables and for programs for such recyclables.

§ 59-7. Division of Water and Sewer.

The Division of Water and Sewer shall generally be responsible as follows:

- A. Manage, administer, repair and maintain the Borough's water supply and water treatment systems, including repairing and maintaining the water wells and pumping equipment, water distribution and piping system, and related equipment in conjunction with the licensed operators.
- B. Manage, administer, repair and maintain the Borough's sewage collection system and public wastewater collection system in conjunction with the licensed operators.

§ 59-8. Division of Harbor.

The Division of Harbor shall generally be responsible as follows:

- A. To work in consultation with the Harbor Manager and its staff and the Borough Administrator to repair and maintain harbor buildings, facilities, docks, and public areas.
- B. To provide such assistance and services as appropriate to place and/or remove boats from storage and/or assist in boating services to patrons of the Borough harbor.

§ 59-9. General services.

The Department shall also generally be responsible as follows:

- A. Receive and review for recommendation street opening permits or other permits as assigned.
- B. Provide such services or assistance to other Borough departments as assigned or directed by the Administrator or Superintendent.

PURCHASING

Chapter 60

PURCHASING

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Qualified Purchasing Agent**[Adopted 7-27-2011 by Ord. No. 14-2011⁴⁷]****§ 60-1. Creation of position; appointment.**

- A. There is hereby created the position of Qualified Purchasing Agent for the Borough of Atlantic Highlands.
- B. The Qualified Purchasing Agent shall be appointed by the governing body.

§ 60-2. Requirements.

The Qualified Purchasing Agent is required to possess a valid Qualified Purchasing Agent certificate, as issued by the New Jersey Division of Local Government Services, Department of Community Affairs.

§ 60-3. Authority and responsibility.

The Qualified Purchasing Agent, shall work with the Borough Administrator, on behalf of the governing body of the Borough of Atlantic Highlands, and shall have the authority, responsibility and accountability for the purchasing activity pursuant to Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) to prepare public advertising for and to receive bids and requests for proposals for the provision or performance of goods, services and construction contracts; to award contracts pursuant to New Jersey law in accordance with the regulations, forms and procedures promulgated by state regulatory agencies; and the establishment and enforcement of any and all local purchasing policies adopted by the governing body; and conduct any activities as may be necessary or appropriate to the purchasing function of the Borough of Atlantic Highlands.

§ 60-4. Bid threshold; political contribution threshold.

- A. Having appointed a qualified purchasing agent pursuant to N.J.S.A. 40A:11-9b, the Borough will take advantage of the higher bid threshold which may be adjusted by the Governor pursuant to N.J.S.A. 40A:11-3c and 18A:18A-3b, but may at its discretion go to bid at a lower amount to encourage greater competition between vendors. **[Amended 9-9-2021 by Ord. No. 20-2021]**
- B. The political contribution threshold (pay-to-play) of \$17,500 remains in place, and all procurement over \$17,500 and less than the agency's new, higher bid threshold (window contracts) are subject to those laws.

47. Editor's Note: This ordinance also superseded former Ch. 60, Purchasing, adopted 6-2-1993 by Ord. No. 28-93.

§ 60-5

PURCHASING

§ 60-5

ARTICLE II
(Reserved)⁴⁸

§ 60-5. through § 60-6. (Reserved)

48. Editor's Note: Former Art. II, Purchasing Policy and Procedures, adopted 9-12-2012 by Ord. No. 09-2012, was repealed 9-9-2021 by Ord. No. 21-2021.

ARTICLE III

Payment of Claims**[Adopted 8-17-2016 by Ord. No. 09-2016]****§ 60-7. Voucher required.**

Any claim for payment from the Borough of Atlantic Highlands shall be presented on a purchase order or a voucher that has been approved for payment by the appropriate department head, officer or employee having knowledge of the facts, and contains information on the items or demand, and a certification by the claimant that the information presented is correct

§ 60-8. Procedure; signatures required.

Purchase orders or vouchers shall be presented for any bill, claim or demand, and shall be paid upon the audit, warrant and approval of the Borough Administrator (BA) and the Qualified Purchasing Agent (QPA), or, in their absence, their designee. The Chief Financial Officer (CFO) will then be required to certify the availability of funds and/or encumber the funds. The CFO (or his/her designee) shall prepare, for a regular meeting of the Borough Council, a list of all bills, claims and vouchers which have been received since the last preceding list was compiled, which shall be filed with the Municipal Clerk as a public record open to examination. All payments shall be ratified by resolution of the governing body, allowing the detailed list to be made part of the public record without the need to read each item.

§ 60-9. Payments prior to Council approval.

Due to the nature of services rendered and timing between governing body meetings and payment due dates, the following expenditures can be paid prior to governing body approval in order to meet certain filing requirements or meet payment deadlines:

- A. Salary and wages.
- B. New Jersey sales tax.
- C. Postage.
- D. Permits and fees for various capital projects.
- E. Payments required by statute to be made at certain times/dates.
- F. Payments made to credit/purchasing card processors.

§ 60-10. Preparation/recording of checks.

- A. The CFO (or his/her designee) shall prepare the checks necessary for the payment of each bill of item or demand contained in the approved list. The following Borough Officials are hereby authorized to sign checks: Mayor, Council President, CFO, Borough Administrator, Municipal Clerk, QPA or Human Resources Manager. Checks must contain the signatures of any three officials authorized to do so, as established by resolution of the governing body. Payroll checks shall be signed by two officials of the Borough authorized to do so, as established by resolution of the governing body. A facsimile signature or signature stamp may be used to replace one live signature on each check.
- B. After the Municipal Clerk has certified that the list of items or demands have been approved, the CFO shall properly record each check in the proper book of accounts and shall cause the checks to be

mailed or delivered in a manner as agreed upon by the Borough and the party claiming payment.

Chapter 61**THIRD-PARTY PAYROLL DISBURSEMENT**

[HISTORY: Adopted by Mayor and Council of Borough of Atlantic Highlands 9-23-2021 by Ord. No. 22-2021. Amendments noted where applicable.]

§ 61-1. Purpose; definitions.

- A. The purpose and intent of these regulations is to abide by the requirements of N.J.S.A. 52:27D-20.1 and N.J.A.C. 5:30-17.1 et seq., governing electronic disbursement controls for payroll purposes.
- B. Definitions. As used in this chapter, the following terms shall have the meanings indicated:
 - APPROVAL OFFICER — Person(s) responsible for authorizing and supervising the activities of the payroll service.
 - BOROUGH — Borough of Atlantic Highlands.
 - PAYROLL SERVICE — Third-party payroll service organization.

§ 61-2. Authorization; compliance.

- A. The Borough is authorized to use a payroll service to prepare payment documentation, take possession of Borough funds, and make such disbursements itself on behalf of the Borough.
- B. The following payroll service providers shall be required to comply with these regulations:
 - (1) Payroll service providers who use their own customized programming process to execute disbursements for the Borough;
 - (2) Payroll service providers who use a third-party processor to execute disbursements for the Borough.

§ 61-3. Borough requirements.

- A. The appointment of a payroll service shall be pursuant to the Local Public Contracts Law, see N.J.S.A. 40A:11-1 et seq., and shall require the contractor to do the following, not by way of limitation: data collection, agency report preparation, calculation of withholding, direct deposit of payroll disbursements, and/or transfer of Borough funds to contractor's account for subsequent disbursement of payment.
- B. Any renewal or extension of a contract under these regulations shall be by resolution.
- C. The Chief Financial Officer is hereby appointed the approval officer and is responsible for authorizing and supervising the activities of the payroll service and shall further be charged with the reconciliation and analysis of all general ledger accounts affected by the activities of the disbursing organization.
- D. If required by the contract between the Borough and the payroll service, the payroll service is permitted to hold Borough funds pending transmittal to a payee.

§ 61-4. Payroll service requirements.

- A. A payroll service must meet all of the following requirements:

- (1) Report any irregularities that may indicate potential fraud, noncompliance with appropriate laws, dishonesty or gross incompetence on the part of the approval officer.
 - (2) Report circumstances that could jeopardize its ability to continue operations or otherwise interrupt the services provided to the Borough.
- B. A payroll service must meet the requirements of N.J.A.C. 5:30-17.5, requiring that the approval officer be assured that the servicer has its own internal controls and appropriately guard against theft and other adverse conditions.
- C. All contracts entered into pursuant to these regulations and the laws authorizing the same shall comply with the requirements of N.J.A.C. 5:30-17.6, which sets out a series of mandatory contractual terms and conditions.

§ 61-5. Establishment of service.

Upon the adoption of these regulations, the Borough Administrator, with the assistance of the Chief Financial Officer and Borough Attorney, as necessary, is hereby authorized and directed to enter into a contract for payroll service in accordance with all local public contracting laws and N.J.A.C. 5:30-17. Appointment of the payroll service shall be by separate resolution of the Borough.

RETIREMENT

Chapter 63

RETIREMENT

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Length of service awards program — See Ch. 34.

Officers and employees — See Ch. 44.

ARTICLE I

Eligibility for Defined Contribution Retirement Program**[Adopted 11-12-2008 by Ord. No. 14-2008]****§ 63-1. Eligible positions.**

Pursuant to N.J.S.A. 43:15C-2, the following positions are deemed to be eligible for and shall participate in the Defined Contribution Retirement Program, unless the participant elects to waive participation, as permitted:

- A. Elected officials [elected to new positions on and after July 1, 2007].
- B. Borough Administrator.
- C. Positions with principal responsibility of a government function(s), commonly called "department heads" or similar title, that are filled by action of the governing body and who report directly to an elected official(s) or chief administrative officer.
 - (1) Harbor Manager. **[Amended 1-25-2012 by Ord. No. 01-2012]**
- D. Legal counsel to the municipality regardless of title:
 - (1) Borough Attorney.
 - (2) Harbor Attorney.
 - (3) Planning Board Attorney.
- E. Borough Engineer.
- F. Harbor Engineer.
- G. Municipal Prosecutor.
- H. Public Defender.
- I. Municipal Court Judge.
- J. Any individual whose position requires the specific consent or approval of the elected governing body, for appointment by the Mayor.

§ 63-2. Exempt positions.

Pursuant to N.J.S.A. 43:15C-2, individuals serving in the following positions are exempt from the Defined Contribution Retirement Program membership:

- A. Tax Collector;
- B. Chief Financial Officer;
- C. Construction Code Official;
- D. Qualified Purchasing Agent;
- E. Tax Assessor;

- F. Registered Municipal Clerk;
- G. Licensed Uniform Subcode Inspector;
- H. Principal Public Works Manager [cited in N.J.S.A. 40A:9-154.6a et seq.]
- I. Any person who is employed or appointed in the regular or normal course of employment or appointment procedures, and consented to or approved in a general or routine manner appropriate for and followed by the Borough Council [includes administrative support and public works rank and file staff].

§ 63-3. Exceptions.

Pursuant to N.J.S.A. 43:15C-2, if an individual is appointed to one of the positions listed in § 63-1 and the individual is not serving in a position as described in § 63-2 above, the Pension Certifying Officer of the municipality may determine that the individual is not required to join the Defined Contribution Retirement Program if that individual:

- A. Was an active participant in the Public Employee Retirement System on July 1, 2007 and continuously since that time; or
- B. Is already enrolled in a PERS position that is promoted to an otherwise DCRP position and has been appointed pursuant to a valid promotional process; or
- C. Is appointed on a temporary, interim, or "acting" basis to a position requiring state certification as set forth in § 63-2 herein, and is in pursuit of the required certification; or
- D. Meets such other exceptions that may be approved by the Local Finance Board or the Division of Pensions and Benefits.

§ 63-4. Dual membership.

Individuals in PERS positions that are appointed to a DCRP position as additional or supplemental responsibilities, one with PERS and one with DCRP applicability, should have a separate salary assigned for each responsibility and membership should be treated accordingly.

§ 63-5. Deposit of excess salary; waiver.

Any employee joining PERS or DCRP on and after July 1, 2007 is subject to having any portion of their salary that exceeds the annual maximum wage contribution base for Social Security, deposited into a DCRP account [N.J.S.A. 43:15A-6(r)(2) and 43:15C-2(a)(5)] unless the participant elects to waive participation, as permitted.

§ 63-6. Implementation and construal of provisions.

This article shall be implemented, construed and subject to the aforesaid Chapter 92 of the Laws of 2007 (N.J.S.A. 43:15C-1 et seq.) as amended from time to time, and any regulations or guidance documents from the Local Finance Board or the Division of Pensions and Benefits.

§ 63-7. Filing requirement.

A copy of this article shall be filed with the Director of the Division of Pensions & Benefits of the New Jersey Department of the Treasury.

General Legislation

ALCOHOLIC BEVERAGES

Chapter 85

ALCOHOLIC BEVERAGES

[HISTORY: Adopted by Mayor and Council of Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Licensing

[Adopted 5-12-1942 by Ord. No. 303]

§ 85-1. Purpose.

This article is for the purpose of fixing license fees and regulating the sale of alcoholic beverages in the Borough of Atlantic Highlands, County of Monmouth, in accordance with provisions of the Alcoholic Beverage Law, being Title 33, Chapter 1, of the Revised Statutes (1937),⁴⁹ as amended and supplemented, and in accordance with the rules and regulations promulgated or to be promulgated by the State Commission of Alcoholic Beverage Control applicable hereto, and in accordance with the rules and regulations existing herein or hereafter adopted by competent municipal authority not inconsistent with said Alcoholic Beverage Law or said rules and regulations of said State Commissioner.

§ 85-2. Unlawful acts.⁵⁰

It shall be unlawful to possess, sell, distribute or transport any alcoholic beverage in the Borough of Atlantic Highlands contrary to the provisions of Title 33, Chapter 1, of the New Jersey Revised Statutes (1937), as amended and supplemented.

§ 85-3. Administrative authority.

The Mayor and Council of the Borough of Atlantic Highlands, County of Monmouth, being the governing body of said municipality, shall constitute the authority for the administration of the issuance hereunder.

§ 85-4. License fees. [Amended 7-28-1953 by Ord. No. 383; 5-3-1988 by Ord. No. 915; 5-9-1989 by Ord. No. 940-89; 8-28-1990 by Ord. No. 975-90]⁵¹

The fees for licenses issued in the Borough of Atlantic Highlands shall be as provided in Chapter 168, Fees, Article II.

§ 85-5. Seasonal licenses and club licenses. [Amended 6-9-1953 by Ord. No. 380]

No seasonal retail consumption license shall be granted within the municipality. One club license shall be issued, it being the intention of this article to provide for the issuance of only plenary retail consumption licenses, plenary retail distribution licenses and one club license.

§ 85-6. Conflict with Zoning Ordinance.⁵²

No license of any class shall be issued contrary to any Zoning Ordinance now existing or hereafter enacted in the municipality.

§ 85-7. Hours. [Amended 10-27-1942 by Ord. No. 305; 5-8-1984 by Ord. No. 836]

- A. No licensee shall sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, or allow the consumption of any alcoholic beverage on licensed premises, on

49. Editor's Note: See N.J.S.A. 33:1-1 et seq.

50. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

51. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

52. Editor's Note: See Ch. 150, Development Regulations.

New Year's Day when it is a weekday between the hours of 5:00 a.m. and 8:00 a.m., on New Year's Day when it is a Sunday, between the hours of 5:00 a.m. and 9:00 a.m., on other weekdays between the hours of 2:00 a.m. and 6:00 a.m. or on other Sundays between the hours of 2:00 a.m. and 9:00 a.m. During the hours sales are prohibited, the entire licensed premises shall be closed.

- B. The hours herein specified shall be according to such time as is then officially in use in the Borough of Atlantic Highlands.

§ 85-8. Violations and penalties.

- A. Any person who shall sell any alcoholic beverages without having complied with or in violation of any of the provisions of this article shall, upon conviction thereof, be subject to a penalty as provided in Chapter 1, Article II, General Penalty.⁵³
- B. Any license issued pursuant to this article may be suspended or revoked for violation of any of the provisions of this article or for violation of any of the provisions of said Alcoholic Beverage Law or of any of the rules and regulations promulgated by the State Commissioner of Alcoholic Beverage Control.

53. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE II

Registration of Licensees and Employees of Licensees**[Adopted 11-22-1977 by Ord. No. 712]****§ 85-9. Registration required; fingerprinting; fee. [Amended 7-8-1980 by Ord. No. 766; 5-28-1988 by Ord. No. 916; 4-25-1989 by Ord. No. 938-89; 12-14-2005 by Ord. No. 32-2005]⁵⁴**

Every person, partnership or corporation now or hereafter holding any Club, Concessionaire's Permit, Plenary Retail Consumption, Plenary Retail Consumption with Broad Package Privilege, Seasonal Retail Consumption, Limited Retail Distribution or Plenary Retail Distribution license issued or to be issued in the Borough and dispensing alcoholic beverages, shall furnish to the Police Department, by April 30 of each year, the name and address of each licensee, person having any interest and employee then and thereafter employed by the owner of the Concessionaire's Permit, Club, Plenary Retail Consumption, Plenary Retail Consumption with Broad Package Privilege, Seasonal Retail Consumption, Limited Retail Distribution or Plenary Retail Distribution license. Each person shall register with the Police Department prior to serving alcoholic beverages and a set of fingerprints of each of the persons and/or employee(s) and licensee or permittee shall be taken under the supervision of the Police Department of the Borough. They shall be required to fill out a request form to obtain a Criminal History Record. If they have not continually lived within New Jersey for the previous five years, they will be required to also pay the corresponding state fee, to obtain the requested information. The Police Department shall collect a fee as provided in Chapter 168, Article II, Fees, for each of the persons and/or employees of the licensee or permittee for the processing of such registration and issuance of a Borough ABC Photo Identification Card.

§ 85-10. Photo identification card. [Added 12-14-2005 by Ord. No. 32-2005]

Each licensee, permittee, person(s) and/or employee(s) of the licensee or permittee shall be required to obtain and keep on their person or on the licensed premises, while dispensing or handling alcoholic beverages within the Borough limits, a Borough issued photo identification card which shall be valid for, and renewable after, a period of five years after the date of issuance. Any time an employee changes employment, or becomes simultaneously employed, with any licensed establishment within the Borough limits, they shall be required to update their registration information.

§ 85-11. Renewal; fees. [Added 12-14-2005 by Ord. No. 32-2005]⁵⁵

Upon renewal, each person, employee, licensee or permittee shall submit a new registration with current information. They shall be required to fill out a request form to obtain a Criminal History Record and pay the corresponding state fee to obtain the requested information. The renewal applicant shall not be required to be re-fingerprinted. The Police Department shall collect a fee as provided in Chapter 168, Fees, Article II, upon each renewal. The license or permit owner shall be exempt from the renewal fees. The Police Department shall collect a fee as provided in Chapter 168, Fees, Article II, for the replacement of a lost or damaged Borough ABC Photo Identification Card.

§ 85-12. Violations and penalties.

- A. Any person who shall violate any provision of this article shall, upon conviction thereof, be subject to a fine of not less than \$100 and to a maximum penalty as provided in Chapter 1, Article II, General Penalty.⁵⁶

54. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

55. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- B. Any license issued pursuant to this article may be suspended or revoked for violation of any provision of this article or for violation of any of the provisions of said Alcoholic Beverage Control Law or of any of the rules and regulations promulgated by the Director of the Department of Alcoholic Beverage Control.

ARTICLE III

Consumption and Possession**[Adopted 9-12-1978 by Ord. No. 732]****§ 85-13. Permit required for sale or consumption in public places. [Added 9-12-1978 by Ord. No. 732]⁵⁷**

No person shall drink or consume any alcoholic beverage on a public or quasi-public street, highway, avenue, alley or road of this Borough or upon any public or quasi-public grounds, parks, sidewalks or in any automobile or other vehicle or any other means of transportation while on the public or quasi-public streets, highways, alleys, avenues, public grounds, parks or sidewalks, unless a license or permit has been issued for the same.

§ 85-14. Permit required for possession in public places. [Added 9-12-1978 by Ord. No. 732]⁵⁸

No person shall possess any open bottle, can or container, which contains alcoholic beverages, on any public or quasi-public street, highway, avenue, alley or road of this Borough or upon any public or quasi-public grounds, parks, sidewalks or in any automobile or other vehicle or other means of transportation while on the public or quasi-public streets, highways, alleys, avenues, public grounds, parks or sidewalks.

§ 85-15. Permit requirements. [Added 9-12-1978 by Ord. No. 732]

A permit shall be issued to dispense alcoholic beverages without charge therefor for social affairs which operate solely for civic, religious, educational, charitable, fraternal, social or recreational purposes and not for private gain. Application for permit shall be made to the Municipal Clerk on the form provided therefor. Upon the granting of said permit, a copy shall be filed with the Police Department of the Borough of Atlantic Highlands.

§ 85-16. Violations and penalties. [Added 9-12-1978 by Ord. No. 732; amended 9-21-1994 by Ord. No. 56-94]⁵⁹

Any persons or persons, firm, partnership or corporation violating this article shall be fined in an amount of not less than \$100 and subject to a maximum penalty as provided in Chapter 1, Article II, General Penalty.

57. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

58. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

59. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ATLANTIC HIGHLANDS CODE

Chapter 97

ANIMALS

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Wildlife Feeding**[Adopted 11-30-2005 by Ord. No. 24-2005]****§ 97-1. Purpose.**

This is an article to prohibit the feeding of unconfined wildlife in any public park or on any other property owned or operated by the Borough of Atlantic Highlands so as to protect public health, safety and welfare, and to prescribe penalties for failure to comply.

§ 97-2. Definitions.

For the purpose of this article, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

FEED — To give, place, expose, deposit, distribute or scatter any edible material with the intention of feeding, attracting or enticing wildlife. Feeding does not include baiting in the legal taking of fish and/or game.

PERSON — Any individual, corporation, company, partnership, firm, association, or political subdivision of this state subject to municipal jurisdiction.

WILDLIFE — All animals that are neither human nor domesticated.

§ 97-3. Prohibited conduct.

No person shall feed, in any public park or on any other property owned or operated by the Borough of Atlantic Highlands, any wildlife, excluding confined wildlife (for example, wildlife confined in zoos, parks or rehabilitation centers, or unconfined wildlife at environmental education centers).

§ 97-4. Enforcement.

- A. This article shall be enforced by the Police Department and/or Code Enforcement Official of the Borough of Atlantic Highlands.
- B. Any person found to be in violation of this article should be ordered to cease the feeding immediately.

§ 97-5. Violations and penalties.⁶⁰

Any person(s) who is found to be in violation of the provisions of this article shall be subject to a penalty as provided in Chapter 1, Article II, General Penalty.

60. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE II

Pet Waste**[Adopted 11-30-2005 by Ord. No. 28-2005]****§ 97-6. Purpose.**

This is an article to establish requirements for the proper disposal of pet solid waste in the Borough of Atlantic Highlands, so as to protect public health, safety and welfare, and to prescribe penalties for failure to comply.

§ 97-7. Definitions.

For the purpose of this article, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future; words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

IMMEDIATE — That the pet solid waste is removed at once, without delay.

OWNER/KEEPER — Any person who shall possess, maintain, house or harbor any pet or otherwise have custody of any pet, whether or not the owner of such pet.

PERSON — Any individual, corporation, company, partnership, firm, association, or political subdivision of this state subject to municipal jurisdiction.

PET — A domesticated animal (other than a disability assistance animal) kept for amusement or companionship.

PET SOLID WASTE — Waste matter expelled from the bowels of the pet; excrement

PROPER DISPOSAL — Placement in a designated waste receptacle, or other suitable container, and discarded in a refuse container which is regularly emptied by the municipality or some other refuse collector; or disposal into a system designed to convey domestic sewage for proper treatment and disposal.

§ 97-8. Requirement for disposal.

All pet owners and keepers are required to immediately and properly dispose of their pet's solid waste deposited on any property, public or private, not owned or possessed by that person.

§ 97-9. Exemptions.

Any owner or keeper who requires the use of a disability assistance animal shall be exempt from the provisions of this article while such animal is being used for that purpose.

§ 97-10. Enforcement.

The Police Department and/or the Code Enforcement Officer of the Borough of Atlantic Highlands shall enforce the provisions of this article.

§ 97-11. Violations and penalties.⁶¹

Any person(s) who is found to be in violation of the provisions of this article shall be subject to a penalty as provided in Chapter 1, Article II, General Penalty.

61. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE III

Dogs, Cats and Other Animals**[Adopted 11-12-2008 by Ord. No. 15-2008]****§ 97-12. Definitions.**

- A. For the purpose of this article, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this article clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number.

- B. The word "shall" is always mandatory and not merely directory.

ANIMAL CONTROL OFFICER — A person 18 years of age or older who has satisfactorily completed the course of study approved by the Commissioner of Health and Senior Services and the Police Training Commission as prescribed by Paragraphs (1) through (3) of Subsection a. of Section 3 of P.L. 1983, c. 525 (N.J.S.A. 4:19-15.16a); or who has been employed in the State of New Jersey in the capacity of, and with similar responsibilities to those required of, a certified animal control officer pursuant to the provisions of P.L. 1983, c. 525 for a period of three years before January 17, 1987.⁶²

CAT — Any member of the domestic feline species, male, female or altered.

CAT OF LICENSING AGE — Any cat which has attained the age of seven months or which possesses a set of permanent teeth.

COMMON HOUSEHOLD PETS — Dogs, cats, hamsters, mice, ferrets, fish, rabbits, potbellied pigs, snakes (excluding constrictors and poisonous snakes) and domesticated birds, including, but not limited to, canaries, parakeets, myna birds, parrots and the like.

DISTURBING NOISE — The habitual barking, howling, whining or crying of a dog or dogs or the howling of a cat or cats, or the chirping, cooing of birds in the Borough of Atlantic Highlands at any hour is hereby declared to be a disturbing noise within the meaning of N.J.S.A. 40:48-1, Subsection 8, and a nuisance.

DOG — Any dog, bitch or spayed bitch.⁶³

DOG OF LICENSING AGE — Any dog which has attained the age of seven months or which possesses a set of permanent teeth.⁶⁴

FARM ANIMALS — Horses, ponies, livestock, cattle, goats, sheep, pigs, mules, donkeys, fowl and any other animals customarily kept on a farm, but not including common household pets.

NEUTERED/SPAYED — Rendered permanently incapable of reproduction as certified by a licensed veterinarian.

OWNER/KEEPER — When applied to the proprietorship of a dog, shall include every person having a right of property in that dog and every person who has that dog in his keeping, and when applied to the proprietorship of any other animal, including, but not limited to, a cat, shall include every person having a right of property in that animal and every person who has that animal in his keeping.⁶⁵

62. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

63. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

64. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

PERSON — Any individual, corporation, partnership, organization or institution commonly recognized by law as a unit.

WILD OR EXOTIC ANIMALS — Any species of animal whose natural or usual habitat within the State of New Jersey is either in a zoo or the wild, as opposed to a domesticated environment, regardless of whether such animal poses an actual or apparent threat to persons, other animals, or property. This includes wild animals not normally found in the State of New Jersey, such as tigers, alligators and other wild animals.

§ 97-13. Dog licensing and control.

- A. License required. Every person who shall own any dog, of licensing age within the municipality shall annually obtain a license for each dog from the Municipal Clerk. The Municipal Clerk shall issue a registration number for each dog so licensed. For the purpose of this section, any person who harbors or possesses any dog for a period of 15 days or more shall be deemed the owner of the dog so harbored or possessed. In order for the license to be issued, the owner must present proof such as a rabies certificate that a licensed veterinarian has vaccinated the dog against rabies and that the duration of immunity from that vaccination extends through at least 10 months of the twelve-month licensing period. An exemption to the rabies inoculation requirement shall be granted if the owner presents written certification from a licensed veterinarian that the dog cannot be vaccinated due to a medical condition or course of therapy or that the dog is too young to be vaccinated. A dog owner shall have the option of obtaining a three-year license. A three-year license shall require proof of rabies vaccination extending over the three-year term of the license, with an expiration date of November 1 or later of the third year of the licensing term. **[Amended 2-23-2011 by Ord. No. 03-2011; 1-25-2024 by Ord. No. 04-2024]**
- B. License fee. Dog license fees, including the late fee to be paid by all persons purchasing a license 30 days after expiration of such license, shall be as provided in Chapter 168, Article II. Dogs used as guides for blind persons and commonly known as "Seeing Eye" dogs shall be licensed and registered as other dogs except that the owner or keeper of such dog shall not be required to pay any fee. **[Amended 5-9-2007 by Ord. No. 07-2007; 2-23-2011 by Ord. No. 03-2011]**
- C. Registration tags. The registration number issued by the Municipal Clerk for each licensed dog shall be on a metal tag, which tag shall be securely attached to a strap or collar worn around the neck or body of each licensed dog. Each tag shall have marked on it the words "Atlantic Highlands, New Jersey," the year for which the tag was issued and the registration number. The Municipal Clerk may issue substitute tags upon proof of loss by the owner of the registered dog; and the owner shall pay an additional fee for each and every substitute tag, which fee shall be as provided in Chapter 168, Article II. **[Amended 2-23-2011 by Ord. No. 03-2011]**
- D. Removing or transferring tags unlawful. No person, except an officer in the performance of his duties, shall remove a registration tag from the collar of any dog without the consent of the owner nor shall any person attach a registration tag to a dog for which it was not issued.
- E. Newly acquired dogs of licensing age. The owner of any newly acquired dog of licensing age or of any dog which attains licensing age shall apply for a license and registration tag for such dog within 10 days after such acquisition or age attainment. **[Amended 2-23-2011 by Ord. No. 03-2011]**
- F. Dogs brought into Borough.

65. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (1) Any person who shall bring or cause to be brought into the Borough any dog currently licensed in any other municipality for the current year and bearing a registration tag and who shall keep the same or permit the same to be kept within the Borough for a period of more than 90 days shall immediately apply for a license and registration tag for each such dog.
 - (2) Any person who shall bring or cause to be brought into the Borough any unlicensed dog of licensing age and who shall keep the same or permit the same to be kept within the Borough for a period of more than 10 days shall immediately apply for a license and registration tag for each such dog. **[Amended 2-23-2011 by Ord. No. 03-2011]**
- G. Recording of dog licenses. The Municipal Clerk shall maintain a system for the purpose of registering the name and address of the owner of the dog sought to be licensed and the name, breed, sex and markings of each dog registered. Its number shall be entered therein and numbers for each application for registration shall be in the order in which the application is made.
- H. Regulations for control of dogs.
- (1) Running at large. No person owning, keeping or harboring any dog shall suffer or permit it to run at large upon the public streets, any public park, any public building or any other public place, unaccompanied by its owner or his, her or its representative and without a leash attached to the collar of such dog or to trespass upon the private property of other persons in the municipality. Any dog found running at large shall be deemed to be doing so with the permission of its owner, keeper or harborer and such person shall be guilty of a violation of this subsection. **[Amended 2-23-2011 by Ord. No. 03-2011]**
 - (2) Nuisance restrictions. No dog owner shall suffer or permit any dog to annoy neighbors or other persons living within the immediate vicinity in the municipality, by barking, howling, whining or crying, nor permit the dog to trespass upon the private property of any other persons in the municipality, nor suffer or permit his dog to damage shrubbery, flowers, gardens or any other property of any kind or character belonging to any neighbor or other person in the municipality. No person shall keep, harbor or maintain any dog which habitually barks howls, between the hours of 10:00 p.m. and 6:00 a.m. or which, by frequent barking, howling, whining or crying, disturbs the peace, comfort or quiet of any neighbor.
 - (3) Solid waste removal. All dog owners and keepers are required to immediately and properly dispose of their pet's solid waste deposited on any property, public or private, not owned or possessed by that person. Proper disposal is the placement in a designated waste receptacle, or other suitable container, and discarded in a refuse container which is regularly emptied by the municipality or some other refuse collector; or disposal into a system designed to convey domestic sewage for proper treatment and disposal. In the event that any dog shall, through inadvertence or otherwise, soil, defile, defecate on or commit any nuisance contrary to the foregoing restrictions, the person owning, harboring, keeping or in charge of such dog shall immediately remove all feces deposited by such dog. The provisions of this article shall not apply to blind persons who may use dogs as guides.

§ 97-14. Seizure and disposition of dogs in violation.

- A. Any member of the Police Department or the Animal Control Officer or its designated agent, authorized or employed for such purpose by the Borough, shall take into custody and impound or cause to be taken into custody and impounded the following:
- (1) Any dog off the premises of the owner or of the person keeping or harboring said dog, which

said Chief or member of the Police Department or agent of the Borough has reason to believe is a stray dog.

- (2) Any dog off the premises of the owner or of the person keeping or harboring said dog without a current registration tag on its collar.
 - (3) Any female dog in season off the premises of the owner or of the person keeping or harboring said dog. **[Added 2-23-2011 by Ord. No. 03-2011]**
 - (4) Any dog or other animal off the premises of the owner reported to, or observed by, a certified animal control officer to be ill, injured or creating a threat to public health, safety or welfare, or otherwise interfering with the enjoyment of property. **[Added 2-23-2011 by Ord. No. 03-2011]**
 - (5) Any dog running at large in violation of § 97-13H.
 - (6) Any dog which has, on more than one occasion, attacked or bitten a human being or which habitually attacks other dogs or domestic animals or which otherwise has shown such savagery, fierceness or ferocity as to indicate that it is a threat to the safety of individual persons (hereby defined to be a "vicious dog").
- B. All dogs seized under these provisions shall be impounded in a place designated by the Borough Council as the dog pound and shall be kept there until disposed of in accordance with the provisions of this section.
- C. Redemption of seized dogs. Any dog seized under the provisions of this section may be redeemed by the owner of the dog upon the payment of such fees as are provided in Chapter 168, Article II; provided, however, that such redemption must be within seven days of the impounding or seizure of any dog as provided in this section. If any animal so seized wears a collar or harness having inscribed thereon or attached thereto the name and address of any person or a registration tag, or the owner or the person keeping or harboring said animal is known, any person authorized by the governing body shall forthwith serve on the person whose address is given on the collar, or on the owner or the person keeping or harboring said animal, if known, a notice in writing stating that the animal has been seized and will be liable to be offered for adoption or destroyed if not claimed within seven days after the service of the notice. **[Amended 2-23-2011 by Ord. No. 03-2011]**
- D. Exemption. The preceding requirements of Subsections A, B, C and D of this section shall not be deemed applicable when any dog found running at large or seized and impounded (whether licensed or unlicensed) is vicious or appears to be suffering from rabies. In such case, the Municipal Clerk or any member of the Police Department or agent of the Humane Society may forthwith cause said dog to be destroyed, without incurring any liability for such action.

§ 97-15. Kennels.

- A. No person, firm or corporation shall, at any time, maintain a kennel or similar structure for the purpose of boarding, raising, training or otherwise dealing in dogs or cats. The boarding, training or sale of dogs or cats for compensation within the limits of the municipality is hereby prohibited.
- B. Nothing in this section shall prevent the use of facilities for the temporary boarding of animals including dogs and cats in direct contiguous conjunction with a licensed veterinarian clinic or veterinary hospital.

§ 97-16. Cat licensing and control.

- A. License required; exception. **[Amended 5-24-2017 by Ord. No. 06-2017]**
- (1) No person shall own, keep, harbor or maintain any cat within the municipality, over seven months of age, unless such cat is vaccinated. For the purpose of this section, any person who harbors or possesses any cat for a period of 15 days or more shall be deemed the owner of the cat so harbored or possessed.
 - (2) Exception. Any cat may be exempted from the requirements of such vaccination upon presentation of a veterinarian's certificate stating that because of an infirmity or other physical condition or regimen of therapy, the inoculation of such cat shall be deemed inadvisable.
- B. Cat license fee. The cat license fee shall be as provided in Chapter 168, Article II. An additional late fee shall be paid by all persons purchasing a license 30 days after expiration of such license. **[Amended 2-23-2011 by Ord. No. 03-2011]**
- C. Registration tags. The registration number issued by the Municipal Clerk for each licensed cat shall be on a metal tag, which tag shall be securely attached to a strap or collar worn around the neck or body of each licensed cat. Each tag shall have marked on it the words "Atlantic Highlands, New Jersey," the year for which the tag was issued and the registration number. The Municipal Clerk may issue substitute tags upon proof of loss by the owner of the registered cat; and the owner shall pay an additional license fee as provided in Chapter 168, Article II, for each and every substitute tag. **[Amended 2-23-2011 by Ord. No. 03-2011]**
- D. Compliance dates. Any cat owner bringing a new cat into the municipality, in any year, must obtain a proper license within 15 days of taking possession of that cat. Any kitten under the age of vaccination must obtain a license within 30 days after receiving their first vaccination. All cats currently residing and licensed within the Borough, must obtain a new license within 30 days after the expiration of such license. Any owner of a cat in the Borough who shall neglect or refuse to obtain a license in the manner herein provided shall be guilty of a violation of this section.
- E. Nuisance restrictions. **[Amended 5-24-2017 by Ord. No. 06-2017]**
- (1) Solid waste removal. All cat owners and keepers are required to immediately and properly dispose of their pet's solid waste deposited on any property, public or private, not owned or possessed by that person. Proper disposal is the placement in a designated waste receptacle, or other suitable container, and discarded in a refuse container which is regularly emptied by the municipality or some other refuse collector; or disposal into a system designed to convey domestic sewage for proper treatment and disposal.
 - (2) No person shall keep, harbor or maintain any cat which habitually whines or howls between the hours of 10:00 p.m. and 6:00 a.m. or which, by frequent howling, whining or crying, disturbs the peace, comfort or quiet of any neighbor.
 - (3) No person shall permit any cat to remain on or about any premises, or provide food to or shelter to any cat unless such cat is vaccinated. Any person feeding or sheltering a cat that is stray or feral shall be considered the owner and keeper of such cat and will be responsible for adhering to all provisions of § 97-16.

§ 97-17. Common household pets.

- A. Number of common household pets limited.
- (1) No person or entity shall own, keep, harbor or maintain more than 12 common household pets,

other than fish, at one premises. Dogs and cats which have not attained licensing age shall not be included within the twelve-pet limitation.

- (2) All common household pets shall be maintained and housed in accordance with all applicable state, county and local health codes and regulations.

B. Pot-bellied pigs.

- (1) Registration required. Every person who shall own any pot-bellied pig within the municipality shall register each pig with the Municipal Clerk. The Municipal Clerk shall issue a registration number for each pig. Every pot-bellied pig must be vaccinated in accordance with the statutes and regulations of the State of New Jersey and the recommendations of any state and/or county health organization.
- (2) License fee. The pot-bellied pig license fee shall be as provided in Chapter 168, Article II. An additional late fee per pot-bellied pig license shall be paid by all persons purchasing a license 30 days after expiration of such license. **[Amended 2-23-2011 by Ord. No. 03-2011]**

C. Solid waste removal. All common household pet owners and keepers are required to immediately and properly dispose of their pet's solid waste deposited on any property, public or private, not owned or possessed by that person. Proper disposal is the placement in a designated waste receptacle, or other suitable container, and discarded in a refuse container which is regularly emptied by the municipality or some other refuse collector; or disposal into a system designed to convey domestic sewage for proper treatment and disposal.

§ 97-18. Animal nuisances.

- A. Declaration of nuisance; responsibility of owner. No person owning or having responsibility for the care, custody or control of any common household pet shall not suffer or permit such animal to:
- (1) Deposit any feces or to commit any nuisance upon any sidewalk, street or thoroughfare or upon any public park, playground or other public place.
 - (2) Soil or defile or do any injury or damage to any lawn, vegetable garden, shrubbery, trees, flowers, driveway or ground on any private property of persons other than that of the owner or person responsible for the care, custody or control of such pet.
 - (3) Cause any injury to any person.
 - (4) Cry, whine, howl or otherwise disturb the peace or quiet of the neighborhood or the sleep of any person for any unreasonable length of time.
 - (5) Be or become a public nuisance or create a condition hazardous to safety health or well-being of any resident, business owner or visitor.
- B. No person shall keep, harbor or maintain any common household pet which habitually disturbs the peace, comfort or quiet of any neighbor.
- C. No person owning or having the responsibility for the care, custody or control of any common household pet shall permit the accumulation of animal waste within or upon the premises where such animal or animals are kept, so as to allow the creation of any public health hazard or an odor of animal waste discernible beyond the property lines of the dwelling unit upon which the animal or animals are kept.

D. Each of the household animal behaviors described in this article is hereby declared to be a nuisance.

§ 97-19. Farm animals and wild or exotic animals.

- A. Purpose. The purpose of this section is to establish requirements for the keeping of farm animals and wild or exotic animals and to establish licensing procedures therefor.
- B. Minimum land area required. No farm animal or wild or exotic animal shall be kept by any person or entity unless the land on which such animal is to be kept shall consist of a minimum of five acres. The governing body of the Borough of Atlantic Highlands finds and declares that such area is the minimum needed for the keeping of such animals.
- C. Licenses required. No person, firm, household, corporation or other entity shall keep any farm animal or wild or exotic animal within the Borough of Atlantic Highlands unless such person or entity shall first apply for and obtain a license from the Municipal Clerk and shall comply with all regulations contained in this section.
- D. License applications. All applications under this section shall be in writing and shall state the kind and number of animals, the purpose for which they will be kept. The application shall be accompanied by a sketch showing the location of all buildings or enclosures proposed for such animals. The Municipal Clerk may require the designation of genus and species of animals were deemed necessary.
- (1) No license shall be granted where it appears from the application that the occupant of any neighboring property shall be adversely affected by the presence of the animals for which the license is sought. "Adversely affected" shall be deemed to mean affected by noise, odor, unsightliness or reasonably perceived danger of physical harm.
 - (2) Applications for licenses to harbor farm animals or wild or exotic animals may be obtained upon application to the Municipal Clerk.
 - (3) Provided that a properly completed application shall be submitted, the Municipal Clerk shall present such application, within 20 days, to the Zoning Officer, which shall grant or deny the license applied for.
 - (4) The Borough Code Enforcement Officer, and/or the Borough Administrator, may revoke any license issued under this section in the event of violation by the licensee of any of the provisions of this chapter.
 - (5) Where any license application is denied or any license is revoked, the applicant or licensee may, within 15 days of the denial or revocation, request a hearing before the governing body. The governing body may affirm, modify or reverse such denial or revocation. The hearing shall be held within 30 days of the receipt of the request for hearing, and the determination of the governing body shall be issued within 30 days after the hearing.
- E. Other laws applicable. Nothing contained in this section shall be deemed to permit the keeping of any animal or engaging in any practice prohibited by Title 4 of the New Jersey Statutes or by any other law, ordinance or regulation.
- F. Exceptions. Any animal rehabilitator licensed by the New Jersey Department of Environmental Protection shall be exempt from the provisions of this section.

§ 97-20. Complaints.

The provisions of this article may be enforced upon written complaint by a complaining witness filed in the Municipal Court. In any proceeding before the Judge of the Municipal Court, upon a complaint duly made and filed in the Municipal Court, if the Court shall then find that the animal in question has committed the prohibited acts alleged in the complaint, there shall be a presumption that the defendant owner, possessor or harbinger has suffered or permitted such animal to commit the prohibited acts alleged in the complaint; and it shall not be necessary that the complainant prove the defendant's knowledge, or intention; provided, however, that it shall appear in such proceeding that a complainant has on at least one other previous occasion lodged a complaint with the Municipal Police Department charging the same defendant with the same offense, and that the defendant had notice of such previous complaints.

§ 97-21. Enforcement.

It shall be the responsibility of the Police Department, Code Enforcement Officer, Animal Control Officer or any other individual, corporation or entity that the municipality shall contract with for the responsibility of enforcing this article to sign a complaint upon violation of this article and also to sign a complaint after investigating the notice of any violation of any provision of this article.

§ 97-22. Interference with performance of official duties.

Any person who shall in any way hinder or interfere with the Police Department, Code Enforcement Officer, Animal Control Officer or any other individual, corporation or entity that the municipality shall contract with for the responsibility of enforcing this article, in the performance of their duties under the provisions of this article shall be deemed to have violated the provisions of this article.

§ 97-23. Violations and penalties.⁶⁶

Except as provided in N.J.S.A. 4:19-15.1 et seq., any person who shall violate any provision of this article, upon conviction thereof, shall pay a fine of not less than \$100 nor more than is provided in Chapter 1, Article II, General Penalty, of this Code.

66. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

BACKGROUND CHECKS

Chapter 103

BACKGROUND CHECKS

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Fire Department — See Ch. 24.

Officers and employees — See Ch. 44.

Auxiliary firemen — See Ch. 28.

ARTICLE I

**Fire Department and Rescue Squad
[Adopted 5-10-2000 by Ord. No. 5-00]****§ 103-1. Statutory authority.**

This article is enacted pursuant to N.J.S.A. 40:42-1 et seq., the Home Rule Act, which directs municipalities to act for the health, welfare, and safety of its citizens and to implement N.J.S.A. 15:8-1.1.

§ 103-2. Definitions.

"Membership in a Volunteer Fire Company" means membership in a Volunteer Fire Company organized pursuant to Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes, Membership in a Volunteer Fire Company or similar organization constituted in a Fire District pursuant to N.J.S.A. 40A:14-70.1, membership in a Junior Fire Fighter's Auxiliary established pursuant to N.J.S.A. 40A:14-95, or nonpaid membership in a part-paid fire department or force established pursuant to Chapter 14 of Title 40A of the New Jersey Statutes.

§ 103-3. Disclosure application; exceptions.

Any person desiring membership in a Volunteer Fire Company or First Aid Squad shall file a disclosure application, in duplicate, with the Volunteer Fire Company or First Aid Squad. Excepted are current members of any Atlantic Highlands Fire Company or First Aid Squad and changes of membership class or Company within or between the Department and Squad. The form of the application may be prescribed by the Volunteer Fire Company and First Aid Squad, but shall contain the following information about the applicant:

- A. Name.
- B. Home address.
- C. Birth date.
- D. Social security number.
- E. Driver's license number.
- F. Any conviction of violation of N.J.S.A. 2C:17-1:
 - (1) Aggravated arson;
 - (2) Arson;
 - (3) Failure to control or report dangerous fire; or
 - (4) Directly or indirectly pays or accepts any form of consideration for the purpose of starting a fire or explosion.
- G. Any conviction of violation of N.J.S.A. 2C:33-3, False public alarms.
- H. Any conviction of a crime or disorderly persons violation.
- I. Such other information as the Volunteer Fire Company deems relevant to the application provided none of such information is prohibited by law.

§ 103-4. Investigation; report.

Following the filing of such application, the Volunteer Fire Company and First Aid Squad shall transmit one of the applications to the Chief of Police of the Borough who shall conduct an investigation to ascertain the truth of the statements made by the applicant upon his/her application and any such other investigation of the applicant's background as he deems necessary for the protection of the public good. If as the result of such investigation the applicant is found to have been convicted of violation of N.J.S.A. 2C:17-1 a, b, c and/or d or N.J.S.A. 2C:33-3 or any other crime or disorderly persons violation or any other information that would indicate the applicant may be a threat to the health, safety or welfare of the community, the Chief of Police shall report such information and the particulars thereof to the Volunteer Fire Company or First Aid Squad, as appropriate, and the Borough Council.

§ 103-5. Fingerprinting; criminal history record.

In connection with said investigation, the applicant shall submit to fingerprinting, and the Chief of Police is authorized to submit applicant's fingerprint card and receive state criminal history record information from the Division of State Police/State Bureau of Identification for use in considering the suitability of all applicants covered under this article.⁶⁷

§ 103-6. Deadline for completion of investigation.

The above investigation by the Chief of Police shall be completed within 30 days of receipt of the application and the fingerprinting of applicant.

67. Editor's Note: Original Section 6, Authorized agency, which immediately followed this section, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE II

Background Checks and Safety Training for Youth Activities**[Adopted 4-26-2023 by Ord. No. 07-2023; amended in its entirety 7-11-2024 by Ord. No. 15-2024]****§ 103-7. Background checks required.**

Criminal history background checks shall be required for any person with regular and direct access to minors involved in any youth-serving organization in the Borough of Atlantic Highlands, including all current or prospective coaches, assistant coaches, board members, seasonal or permanent employees, and volunteers. This requirement shall apply to any recreation or sports program offering services for persons younger than 18 years of age that are sponsored, funded or administered, in whole or in part, by the Borough or its Recreation Committee.

§ 103-7.1. Safety training required.

Safety training meeting the "Minimum Standards for Volunteer Coaches Safety Orientation and Training Skills Programs" established in N.J.A.C. 5:52 shall be required for any person participating in any Atlantic Highlands Recreation Committee sponsored sporting leagues or activities, including all current or prospective coaches, assistant coaches, board members, seasonal or permanent employees, and volunteers.

§ 103-8. Definitions.

For the purposes of this article, the following words and terms shall have the following meanings:

AUTHORIZED VENDOR — A vendor which is authorized by the State of New Jersey to conduct criminal history record background checks.

COMMITTEE — The Borough of Atlantic Highlands Recreation Committee.

CRIMINAL HISTORY RECORD BACKGROUND — A determination of whether a person has a criminal record by cross-referencing that person's records with those on file with the Federal Bureau of Investigation Identification Division and the State Bureau of Identification in the Division of State Police.

YOUTH-SERVING RECREATION ORGANIZATION or ORGANIZATION — A corporation, association or other organization, including those with nonprofit status, which provides recreation-related activities or services for persons younger than 18 years of age in connection with the Borough of Atlantic Highlands sponsored or cosponsored youth activities programs or leagues.

§ 103-9. Requests for criminal background checks and costs.

- A. Any individual subject to the requirement in § 103-7 of this article shall submit to a criminal history background check to be conducted by the Committee through an authorized vendor.
- B. The Committee shall conduct a criminal history record background check only upon receipt of the requisite written consent from the individual.
- C. The Committee shall cover the cost of the criminal history background check.
- D. If the Committee is notified by the authorized vendor that an individual's criminal history record background check reveals a conviction of a disqualifying crime or offense specified in § 103-10 of this article, the Committee shall promptly notify the Borough Administrator.
- E. Any person who, by virtue of his/her occupation, is required by statute to undergo a federal and state

criminal history record background check similar in nature to the requirements contained herein, and who can provide to the Borough Administrator proof of the satisfactory results of such background check, is exempt from the requirement hereunder unless two years have elapsed since the most current background check.

- F. Notwithstanding any provision herein to the contrary, the Borough may also contract with a youth-serving recreation organization and the organization may conduct the criminal history background checks in accordance with the provisions of this section.

§ 103-10. Conditions under which a person is disqualified from service.

Disqualifying conditions. The Borough Administrator, in consultation with the Chief of Police, shall make a determination as to whether any event in the criminal history check record constitutes a disqualifying condition. A person may be disqualified from serving as an employee or volunteer of a youth-serving recreation organization if that person's record reveals conviction of any of the following crimes and offenses:

- A. In New Jersey, any crime or disorderly persons offense:
- (1) Involving danger to the person, meaning those crimes and disorderly persons offenses as set forth in N.J.S.A. 2C:11-1 et seq., such as criminal homicide; N.J.S.A. 2C:12-1 et seq., such as assault, reckless endangerment, threats, stalking; N.J.S.A. 2C:13-1 et seq., such as kidnapping; N.J.S.A. 2C:14-1 et seq., such as sexual assault; or N.J.S.A. 2C:15-1 et seq., such as robbery;
 - (2) Against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.A. 2C:24-1 et seq., such as endangering the welfare of a child;
 - (3) Involving theft, as set forth in Chapter 20 of Title 2C of the New Jersey Statutes;
 - (4) Involving any controlled dangerous substance or controlled substance analog as set forth in Chapter 35 of Title 2C of the New Jersey Statutes, except Paragraph (4) of Subsection (a) of N.J.S.A. 2C:35-10, possession of six ounces or less of marijuana.
- B. In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in Subsection A.
- C. This list of crimes and violations contained in this section is for illustrative purposes only and shall not be construed as exhaustive of the criminal convictions or violations that may be grounds for disqualification based upon the discretion of the Borough Administrator and Chief of Police.
- D. Disorderly persons convictions that occurred more than 10 years prior to the date of the criminal background search shall not serve to disqualify the individual involved, provided there have been no subsequent conviction and provided the original violations did not involve children or minors.
- E. Refusal. Refusal by any individuals subject to § 103-7 to submit to the required background check will result in the immediate dismissal or exclusion of the individual from any Borough activities requiring backgrounds checks.

§ 103-11. Limitations on access and use of criminal history record information.

- A. Access to criminal history record information for non-criminal-justice purposes, including licensing and employment, is restricted to the municipality's Human Resources Department, Borough Administrator and responsible personnel as authorized in the written consent or as authorized by

federal or state statute, rule or regulation, executive order, administrative code, local ordinance, or resolution regarding obtaining and disseminating of criminal history record information obtained under this article.

- B. Criminal history record information furnished shall not be disseminated to persons or organizations not authorized to receive the records. Use of this record shall be limited solely to the authorized purpose for which it was given, and it shall not be disseminated to any unauthorized persons or entities.

§ 103-12. Challenge of accuracy of report.

If a criminal history record may disqualify an individual, that individual shall be provided with an opportunity to complete and challenge the accuracy of the information contained in the criminal history record. The individual, upon his or her request, shall be afforded a reasonable period of time to correct and complete this record. The Committee shall coordinate between the individual and the Division of State Police or the authorized vendor any such opportunity to complete or challenge the accuracy of the information contained in the criminal history record.

§ 103-13. Notification of subsequent disqualifying offense.

If an employee or volunteer is convicted of a disqualifying crime or offense as specified in § 103-10 hereof after such person has cleared the required background check, such person must immediately (no later than three days after such conviction) notify the Borough Administrator of the conviction. Such person shall be immediately disqualified from his or her position.

§ 103-14. Right of appeal.

In the event the Borough Administrator determines that an individual is disqualified as a result of a conviction, the individual shall be notified by the Clerk, in writing, and be immediately barred from any further participation in the Borough's recreational activities. The individual shall have a right to appeal within five days of such notification and request a hearing before a review committee comprised of the Borough Administrator, Chief of Police (or their designee), Borough Clerk and designee(s) of the Recreation Committee. Such hearing shall not be open to the public in order to protect the privacy interests of the individual. At the time of the hearing, the individual shall be prepared to present any witnesses or evidence in support of his or her claim that the violation does not negatively impact his or her ability to be involved with children's activities at Borough -owned facilities. The Committee shall hear the evidence and testimony as presented by the individual and shall have the opportunity to cross-examine or call witnesses of its own. The hearing may be continued from time to time in the event the Committee determines additional information or testimony is needed. Upon the conclusion of any hearings, the Borough shall render its written decision within 30 days.

§ 103-15. Violations and penalties.

Failure to comply with this section by any youth-serving recreation organization may result in the Borough withholding funding for any of its programs, and/or prohibiting its use of Borough facilities.

§ 103-16. Frequency of background checks.

Background checks procured by the Committee are valid for a period of three years. Thereafter, a new background check is required.

§ 103-17. Safety training administration and cost.

Safety training for coaches, assistant coaches and others shall be coordinated by the Committee. Training must meet the minimum standards set forth in N.J.A.C. 5:52 and provide partial civil immunity protection to volunteer coaches under the "Little League Law" (N.J.S.A. 2A:62A-6 et seq.). Any/all safety training deemed necessary by the Committee or Borough shall be offered at no cost to the participants.

BALLOONS, INTENTIONAL RELEASE OF

Chapter 106

BALLOONS, INTENTIONAL RELEASE OF

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 7-10-2019 by Ord. No. 09-2019. Amendments noted where applicable.]

§ 106-1. Purpose.

It is hereby found and declared that it will be the public policy of the Borough of the Atlantic Highlands to take action when feasible to reduce the effects of certain products utilized, placed, or released within the environment in order to protect the health and safety of the general public.

§ 106-2. Release of balloons.

This chapter is adopted in order to protect the environment, particularly the wildlife, and the health, safety and well-being of persons and property by prohibiting the release of balloons inflated with lighter-than-air gases into the atmosphere, including, but not limited to, latex and mylar, as it has been determined that the release of balloons inflated with lighter-than-air gases pose a danger and nuisance to the environment, particularly to wildlife and marine animals so as to constitute a public nuisance and may pose a threat to the safety of its inhabitants and their property.

§ 106-3. Prohibited releases.

It shall be unlawful for any person, firm or corporation to intentionally release, organize the release of, or intentionally cause to be released balloons inflated with a gas that is lighter than air within the Borough of the Atlantic Highlands limits, except for:

- A. Balloons released by a person on behalf of a governmental agency or pursuant to a governmental contract for scientific or meteorological purposes;
- B. Hot air balloons that are recovered after launching; and
- C. Balloons released indoors.

§ 106-4. Violations and penalties.

Any person found in violation of this Chapter 106 is guilty of a noncriminal infraction punishable by a fine not to exceed the sum of \$500.

ATLANTIC HIGHLANDS CODE

Chapter 110

BUSINESS HOURS OF OPERATION

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 10-10-2018 by Ord. No. 19-2018. Amendments noted where applicable.]

§ 110-1. Business and commercial establishments; hours of operation.

No business or commercial establishment to which the public is invited within the Central Business District or the Historic Business District, as set forth in Chapter 150, Development Regulations, as amended or as may hereafter be amended or supplemented, shall be open to the public or conduct any such business, operations or activities in any manner before 5:00 a.m. on any day and after midnight on the same day, seven days per week.

§ 110-2. Exclusions.

The following businesses and commercial establishments, if not otherwise excluded pursuant to § 110-1, shall be excluded from the application of § 110-1, all being either otherwise regulated by law, deemed to involve minimal nuisance characteristics, necessary to the public health, safety, welfare or convenience, or some combination of the foregoing, as follows:

- A. Establishment licensed for the sale of alcoholic beverages pursuant to Chapter 85, Alcoholic Beverages, § 85-7, Hours, of the Code of the Borough of the Atlantic Highlands whose hours and mode of operation are governed separately by Borough ordinance and by N.J.S.A. 33:1-1 et seq. of the Laws of New Jersey pertaining to alcoholic beverages.
- B. Movies and other theatrical performances, provided that the final performance or feature film on any given date commences at or before midnight.
- C. Automatic teller machines (ATM's) associated with banks that would otherwise be closed.
- D. Hotels and motels.
- E. Incidental activities, not involving business operations or sales or services, within or about any business or commercial establishment which may be required in advance of or after the hours of operation permitted by § 110-1 including but not limited to, preparation of food and baked goods for retail sale, cleaning and sweeping, off-street loading and unloading of inventory and supplies and disposal of waste and garbage, provided such activities are carried on in such reasonable manner as to emit the least possible noise.

§ 110-3. Violations and penalties.

Any person, firm or corporation who shall violate any provision of this chapter shall be punishable upon conviction, as provided in Chapter 1, General Provisions, Article II, General Penalty, § 1-15, Violations and penalties of this Code. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

CAMPING

Chapter 120

CAMPING

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Parks and recreation areas — See Ch. 249.

ARTICLE I
Lenape Woods
[4-22-2015 by Ord. No. 03-2015]

§ 120-1. Short title.

The title of this article is "Authorized Camping in the Lenape Woods."

§ 120-2. Definitions.

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

APPLICATION CHECKLIST — The list of submission requirements adopted by ordinance and provided by the Municipal Clerk to any eligible group seeking permission to camp overnight in the Lenape Woods.

BOROUGH — The Borough of Atlantic Highlands as a municipal entity, any elected official, officer, employee, agent, department, board or commission of the Borough of Atlantic Highlands.

CAMPING — The occupation of the campsite by members of an eligible group for the purpose of engaging in approved outdoor recreational activity over a period not to exceed 24 hours.

CAMPSITE — A place to be designated within Lenape Woods where tents or other temporary shelters may be erected.

ELIGIBLE GROUP — Members of any nationally chartered youth group with a demonstrated culture of environmental awareness and conservation.

REGISTERED ADULT LEADER — An adult member of an eligible group that is registered with the group's chartering organization and has the appropriate level of training that the chartering organization requires to supervise outdoor activities.

§ 120-3. Application for permit.

- A. All eligible groups must submit, in person, a completed application, on a form specified by the Municipal Clerk no later than 14 days prior to the proposed camping date.
- B. The Municipal Clerk will schedule all camping activities with a registered adult leader from each eligible group.

§ 120-4. Supervision of campers.

Any eligible group camping must insure that at least three adult leaders, including at least one registered adult leader is present at all times while the campers are present. The registered adult leader must, at all times, have a properly working cell phone with them while in the park, and the number must be included in the application submitted to the Municipal Clerk. The adult leaders must also sleep at the campsite, in the immediate vicinity of all other campers, and be available to them at all times during the camping excursion.

§ 120-5. Campfires and fire pits.

- A. Campfires and open flames of any type are prohibited.
- B. Cooking on permitted devices is permitted.
- C. Permitted devices include Underwriters Laboratories certified appliances such as a propane cook

stove or commercially prepared charcoal in an aboveground charcoal grill or brazier.

- D. At least one ten-pound fire extinguisher (rated ABC) will be on hand for each permitted device/grill/brazier in use.

§ 120-6. Additional requirements.

- A. Each application by an eligible group for a permit shall include at the minimum:

- (1) The approximate number, and age of all youth participants (not to exceed 12 youths).
- (2) Telephone number(s), home of record, driver's license number and name of at least one emergency contact for each adult leader, including at least one registered adult leader and one additional adult leader for every four youth campers.
- (3) Contact information for the eligible groups chartering organization.
- (4) Certification that at least one adult is a registered adult leader within the meaning of this article.
- (5) Certification by the registered leader that a final list of all participants will be provided to the Police Department when the group checks in.
- (6) Certification by the registered leader that the group is properly equipped, including a first aid kit and at least one adult leader currently certified in CPR.
- (7) Proof of \$1,000,000 liability insurance on file with the Municipal Clerk.
- (8) Such additional information as may be deemed appropriate by the Borough Administrator, Chief of Police and/or Fire Marshal.
- (9) Confirmation that the registered adult leader is familiar with municipal noise ordinances and agrees that the eligible group will abide by same and respect the private property rights of the neighbors adjoining the Lenape Woods.
- (10) Confirmation that the registered adult leader understands that the cutting of live plants or collecting of firewood is not a permitted activity and that campers will adhere to established trails and use only previously cleared areas for the placement of tents and other shelters.
- (11) Immediately prior to the beginning of their camping excursion, each eligible group's registered adult leader will present themselves at the Atlantic Highlands Police Department and notify the Department that members of the eligible group have arrived or will shortly arrive at the campsite, and provide the Police Department with a current list containing the names of the overnight campers, make, model and license plate number of all the eligible groups' vehicles, and cell phone numbers for each adult leader and the registered adult leader participant. In addition, the eligible groups' vehicles will be issued an overnight parking permit that will be dated and placed on the dashboard of each vehicle that will be parked overnight.
- (12) Upon completion of the camping excursion, an adult leader will also contact the Atlantic Highlands Police Department and notify them that the eligible group has completed their camping excursion and that all campers are accounted for. The adult leader will also confirm that the campsite has been left in the condition specified in the application checklist.
- (13) The eligible group's adult leader must agree to have an "all night" fire/safety watch. A person or rotating shift of persons, awake and alert throughout the night to protect the health, safety and

well-being of the entire group of campers.

- B. All groups camping in the Lenape Woods, pursuant to a permit issued under this article shall be responsible for policing of the campsite area and the removal of all debris and materials brought in to the campsite by the group. The registered adult leader shall be responsible for compliance with this requirement.

ATLANTIC HIGHLANDS CODE

Chapter 128

CERTIFICATES OF OCCUPANCY AND INSPECTIONS

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Certificate of Occupancy**[Adopted 8-9-1977 by Ord. No. 704; amended in its entirety 5-9-2024 by Ord. No. 10-2024]****§ 128-1. Certificate of occupancy required for dwellings and commercial buildings.**

- A. No owner of property, agent of an owner, real estate agent or broker, firm, company, partnership, corporation or person or persons shall sell, rent or lease or suffer to allow any person or persons to live in or occupy as an owner, tenant or otherwise any dwelling, unit or apartment unless a certificate of occupancy, certifying that said dwelling, unit or apartment is fit for human habitation and that said dwelling, unit or apartment is in compliance with all other ordinances of the Borough of Atlantic Highlands, shall first be obtained from the Construction Official of the Borough of Atlantic Highlands. Such certificate of occupancy shall be granted or denied within 10 days from the date of the application for the same.
- B. Certificate required for commercial buildings. No owner of property or agent shall sell, rent, or allow any person or business to occupy, any building or part thereof for any nonresidential use unless a certificate of occupancy, certifying that said building or part thereof is in compliance with all ordinances of the Borough of Atlantic Highlands, shall first be obtained from the Construction Official of the Borough of Atlantic Highlands. Such certificate of occupancy shall be granted or denied within 10 business days from the date of application for the same. In addition to the regular application fee, the owner of the property shall pay all charges of the Municipal Engineer if the Construction Official determines that an inspection by the Municipal Engineer is required.

§ 128-2. Application.

- A. The Construction Official shall cause to be prepared appropriate application forms for such certificate of occupancy, which forms shall be available at the office of the Municipal Clerk.
- B. The Construction Official shall also cause to be prepared appropriate forms of such certificate of occupancy.

§ 128-3. Temporary certificates of occupancy.

The Construction Official shall have the power to cause to be prepared appropriate application forms for the issuance of temporary certificates of occupancy. Said temporary certificates of occupancy shall be issued for the purpose of allowing an owner, agent of an owner, etc., of property to sell, rent and/or lease said property based upon the Construction Official's issuing a temporary certificate of occupancy. However, in no event shall any owner, agent of an owner, etc., be allowed to live in or occupy any dwelling, unit or apartment unless or until a permanent certificate of occupancy as per § 128-1 above is obtained.

§ 128-4. Violations and penalties.

Any person, firm or corporation who shall violate any of the provisions of this article, or who shall violate an order of the Construction Official after duly made and promulgated pursuant to this article, or who interferes with the Construction Official or any other person authorized to exercise the powers of the Construction Official, shall, upon conviction in the Municipal Court, be subject to a penalty as provided in Chapter 1, Article II, General Penalty; and such action in and penalties imposed by the Municipal Court may be in addition to any other action or proceedings in this article. Each day that a violation is permitted to exist shall constitute a separate offense.

ARTICLE II

Certificate of Inspection**[Adopted 2-20-1991 by Ord. No. 988-91; amended in its entirety 5-9-2024 by Ord. No. 10-2024]****§ 128-5. Definitions.**

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

BOROUGH — The Borough of Atlantic Highlands, County of Monmouth, State of New Jersey.

CERTIFICATE OF INSPECTION — A certificate issued by the Inspector certifying that a property is fit for human habitation and is in compliance with all applicable federal and state laws and ordinances of the Borough.

FAMILY — Any number of individuals related by blood, marriage or adoption, and their domestic employees, living together as a single housekeeping unit and sharing rooms and other housekeeping facilities in common.

HOTEL — A building containing one or more rooms used, rented or hired out on a transient basis to be occupied for sleeping purposes only, and not containing individual eating and cooking facilities.

INSPECTOR — The person designated by the Borough of Atlantic Highlands to inspect and issue certificates of inspection.

MOTEL — A building containing one or more rooms with individual entrances, used, rented or hired out on a transient basis to be occupied for sleeping purposes only and not containing individual eating and cooking facilities.

TRANSFER OF TITLE — The legal transfer of ownership of property from one person or entity to another person or entity.

§ 128-6. Certificate of inspection required for rental properties; inspection.

No person, firm, partnership, association, corporation or the like shall rent, lease or suffer or allow any person or persons except members of the family to live in or occupy, as a tenant, any room, dwelling, apartment, house trailer, mobile home or the like, except if the same is part of a motel or hotel and provided that unless a certificate of inspection is obtained from the Inspector after an inspection thereof certifying that said room, dwelling, apartment, house trailer, mobile home or the like is fit for human habitation and is in compliance with all applicable federal and state laws and ordinances of the Borough.

§ 128-7. Certificate of inspection required for commercial properties; inspection.

No person, firm, partnership, association, corporation or the like shall rent, lease or suffer or allow any person or persons to occupy a commercial property within the Borough unless a certificate of inspection is obtained from the Inspector after an inspection thereof certifying that said commercial property is fit for human habitation and is in compliance with all applicable federal and state laws and ordinances of the Borough.

§ 128-8. Certificate of inspection upon transfer of title; inspection.

Upon transfer of title to property in the Borough, no person shall occupy, rent, lease or suffer or allow any person or persons to live in or occupy said property unless a certificate of inspection is obtained from the Inspector after an inspection thereof certifying that said property is fit for human habitation and is in compliance with all applicable federal and state laws and ordinances of the Borough.

§ 128-9. Application requirements.

Applications for certificates of inspection shall be made in writing to the Inspector and shall state:

- A. The name, address and principal place of business of the owner.
- B. Such description of the room, dwelling, apartment or the like, by street number or otherwise, as will enable the Inspector easily to locate the same.
- C. The name and address of the principal place of business of the agent, person, association or corporation, if any, appointed by said owner for the management of the same.

§ 128-10. Filing required when premises vacated.

The owner shall, not more than 30 days prior nor less than 10 days after a tenant removes from and vacates a room, dwelling, apartment or the like, file with the office of Code Enforcement a statement containing the address of the premises and the number or other specific description of the place vacated.

§ 128-11. Required procedures prior to new occupancy.

No such vacated room, dwelling, apartment or the like shall be rented or occupied in whole or in part by any new tenant until an inspection has been made by the Inspector to determine whether such room, dwelling, apartment or the like is in violation of any applicable federal or state law or ordinance of the said Borough. If no such violation exists, the Inspector shall issue a certificate of inspection; otherwise, he or she shall notify the owner in writing setting forth the specific violations existing.

§ 128-12. Inspection procedures.

An inspection pursuant to § 128-7 shall be made, and either a certificate of inspection or a notice of violation shall be issued, as aforesaid within five business days from the date of application. If said inspection is not accomplished in said five-day period, the room, dwelling, apartment or the like may be occupied by the new tenant but subject to the right of the Borough to cause said room, dwelling, apartment or the like to be inspected and, if a violation is found, to cause said premises to be vacated within 10 days from the date of notice thereof.

§ 128-13. Posting of certificate of inspection.

A certificate of inspection issued pursuant to this article shall be posted in a conspicuous place in the said room, dwelling, apartment or the like upon the issuance thereof.

§ 128-14. Violations and penalties.

Any person, firm, partnership, association, corporation or the like who shall violate any provision of this article shall be subject to a fine of not less than \$100 nor more than such penalty as provided in Chapter 1, Article II, General Penalty. Each day shall be considered a separate violation.

ARTICLE III
Lead-Safe Certification
[Adopted 5-9-2024 by Ord. No. 10-2024]

§ 128-15. Definitions.

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

COMMISSIONER — The Commissioner of the Department of Community Affairs.

DEPARTMENT — The Department of Community Affairs.

DUST WIPE SAMPLING — A sample collected by wiping a representative surface and tested, in accordance with a method approved by the United States Department of Housing and Urban Development (HUD) and as conducted pursuant to N.J.A.C. 5:28A-2.3.

DWELLING — A building containing a room or rooms, or suite, apartment, unit, or space, that is rented and occupied, or intended to be rented and occupied, for sleeping and dwelling purposes by one or more persons.

DWELLING UNIT — A unit within a building that is rented and occupied, or intended to be rented and occupied, for sleeping and dwelling purposes by one or more persons.

INTERIM CONTROLS — A set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs, or the term as it is defined pursuant to 42 U.S.C. § 4851b and the regulations adopted pursuant thereto.

LEAD ABATEMENT — A set of measures designed to permanently eliminate lead-based paint hazards, in accordance with the standards established by the Commissioner at N.J.A.C. 5:17.

LEAD EVALUATION CONTRACTOR — A firm certified by the Department to perform lead inspection and risk assessment work pursuant to N.J.A.C. 5:17. This includes the ability to perform dust wipe sampling.

LEAD FREE — A dwelling has been certified to have no lead-based paint or has undergone lead abatement, in accordance with N.J.A.C. 5:17.

LEAD INSPECTOR/RISK ASSESSOR — An individual certified by the New Jersey Department of Health to perform lead inspection and risk assessment work pursuant to N.J.A.C. 8:62. This includes the ability to perform dust wipe sampling.

LEAD SAFE — A dwelling has been found to have no outstanding lead-based paint hazards. It does not mean that the dwelling is certified to be lead free.

LEAD-BASED PAINT HAZARD — Any condition that causes exposure to lead from lead-contaminated dust or lead-contaminated paint that is deteriorated or present on surfaces, that would result in adverse human health effects.

LEAD-FREE CERTIFICATION — The certificate issued, in accordance with N.J.A.C. 5:17, which states that there is no lead-based paint, or that the dwelling has undergone lead abatement, in accordance with N.J.A.C. 5:17.

LEAD-SAFE CERTIFICATION — The certification issued pursuant to this article, which confirms that a periodic lead-based paint inspection was performed, and no lead-based paint hazards were found. This certification is valid for two years from the date of issuance, in accordance with N.J.A.C. 5:28A-2.4.

MULTIPLE DWELLING — Any building or structure and any land appurtenant thereto, and any portion thereof, in which three or more dwelling units are occupied or intended to be occupied by three or more persons living independently of each other. "Multiple dwelling" also means any group of 10 or more buildings on a single parcel of land or on contiguous parcels under common ownership, in each of which two dwelling units are occupied, or intended to be occupied, by two persons or households living independently of each other, and any land appurtenant thereto, and any portion thereof. "Multiple dwelling" does not include those buildings and structures that are excluded pursuant to N.J.S.A. 55:13A-3(k).

MUNICIPAL LEAD PAINT INSPECTOR — The person qualified and designated by the Borough of Atlantic Highlands to inspect and issue lead-safe certifications.

PERIODIC LEAD-BASED PAINT INSPECTION — The initial inspection of all applicable dwelling units at the earlier of two years from the effective date of P.L. 2021, c. 182, July 22, 2022, or tenant turnover, and thereafter the earlier of three years or upon tenant turnover, consistent with N.J.A.C. 5:28A-2.1, for the purposes of identifying lead-based paint hazards in dwellings subject to this article.

REMEDIATION — Interim controls or lead abatement work undertaken in conformance with this article to address lead-based paint hazards.

TENANT TURNOVER — The time at which all existing occupants vacate a dwelling unit, and all new tenants move into the dwelling unit or the time at which a new tenant enters a vacant dwelling unit.

VISUAL ASSESSMENT — A visual examination for deteriorated paint or visible surface dust, debris, or residue, and as conducted pursuant to N.J.A.C. 5:28A-2.3.

§ 128-16. Applicability; exemptions.

- A. This article applies to all rental single-family, two-family, and multiple dwelling units with the exception of those exempt pursuant to Subsection B below.
- B. The following rental dwelling units shall be exempt from the requirements of this article and, thus, shall not be subject to periodic lead-based paint inspection and evaluation for the presence of lead-based paint hazards:
 - (1) Dwelling units that were constructed during, or after, 1978;
 - (2) Dwelling units that have been certified to be free of lead-based paint, pursuant to N.J.A.C. 5:17;
 - (3) Multiple rental dwelling units constructed prior to 1978 that have been registered with the Department for at least 10 years and have no outstanding paint violations from the most recent cyclical inspection performed on the multiple dwelling pursuant to the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq., and N.J.A.C. 5:10;
 - (a) All multiple dwelling units constructed prior to 1978 that have been registered with the Department for at least 10 years and that have a current certificate of inspection issued by the Department of Community Affairs, Bureau of Housing Inspection, shall be exempt from this article;
 - (b) All multiple dwelling units constructed prior to 1978 that have been registered with the Department for at least 10 years with open inspections that have no violations for paint shall also be exempt from this article; and
 - (4) Dwellings with a valid lead-safe certification issued pursuant to this article. Lead-safe certifications are valid for two years from the date of issuance pursuant to N.J.A.C. 5:28A-2.4.

§ 128-17. Registration.

- A. All rental dwellings as defined in § 128-15 of this article, except exempt dwelling units, shall be registered by the owner or their agent with the Municipal Clerk, on forms provided for that purpose and which shall be obtained from the Municipal Clerk or their designee. Such rental dwelling registration is not transferable to a new owner. Such registration shall occur within 10 business days of each change of owner of the rental dwelling.
- B. All changes in tenancy, except as to exempt dwelling units, shall be registered by the owner or their agent with the Municipal Clerk or their designee, on forms provided for that purpose and which shall be obtained from the Municipal Clerk or their designee. Such registration is not transferable to a new tenant. Such registration shall occur within five business days of each change of tenant turnover or other change in tenancy of the rental dwelling unit.

§ 128-18. Periodic lead-based paint inspection required.

- A. Upon tenant turnover or within two years of the effective date of P.L. 2021, c. 182, July 22, 2022, whichever is sooner, an initial inspection of all single-family, two-family, and multiple dwellings subject to this article shall be made by the Municipal Lead Paint Inspector. Thereafter, all such dwelling units shall be inspected for lead-based paint hazards every three years or upon tenant turnover, whichever is earlier, except that an inspection shall not be required at tenant turnover, if the dwelling unit owner has a valid lead-safe certification for the dwelling unit.
 - (1) In all scenarios, the next periodic lead-based paint inspection shall be counted from the most recent periodic lead-based paint inspection that resulted in a valid lead-safe certification.
- B. The Municipal Lead Paint Inspector shall be responsible for inspecting every single-family, two-family, and multiple dwelling subject to this article for lead-based paint hazards, except pursuant to Subsection C below.
- C. If a landlord or owner so chooses, a dwelling unit owner or landlord may directly hire a lead evaluation contractor to conduct the periodic lead-based paint inspections for lead-based paint.
 - (1) The municipality shall have the authority to conduct inspections or investigations of landlords or owners that directly hire lead evaluation contractors to ensure that periodic lead-based paint inspections are being performed, in accordance with this article.
 - (2) The municipality shall have the authority to prohibit an owner from directly hiring a lead evaluation contractor to conduct a periodic lead-based paint inspection in the following situations:
 - (a) An owner who previously opted to hire a lead evaluation contractor to perform the periodic lead-based paint inspection failed to have the inspection completed; or
 - (b) The municipality determines there is a conflict of interest between the owner and their lead evaluation contractor of choice.

§ 128-19. Fees for inspection.

- A. The dwelling owner or landlord shall pay to the municipality a fee to cover the cost of the periodic lead-based paint inspection as set forth in § 168-2A(3)(c).
- B. In addition, the dwelling owner or landlord shall pay to the municipality an additional fee of \$20 per

unit inspected for the purposes of the Lead Hazard Control Assistance Act, P.L. 2003, c. 311 (N.J.S.A. 52:27D-437.1 et seq.), concerning lead hazard control work, unless the unit owner demonstrates that the Department has already assessed an additional inspection fee of \$20 pursuant to the provisions of Section 10 at P.L. 2003, c. 311 (N.J.S.A. 52:27D-437.10).

§ 128-20. Inspection procedure.

- A. If, according to the central lead screening database maintained by the New Jersey Department of Health or other data deemed appropriate by the Department, less than 3% of children residing in Atlantic Highlands tested, six years of age or younger, have a blood lead level greater than or equal to five (micro) g/dL, or if different, the level set forth at N.J.S.A. 52:27D-437.16, the periodic lead-based paint inspection conducted by the Municipal Lead Paint Inspector or lead evaluation contractor may be performed through a visual assessment.
 - (1) For a visual assessment, the Municipal Lead Paint Inspector or lead evaluation contractor shall examine dwellings, in accordance with HUD guidelines and regulations at 42 U.S.C. § 4851b, for deteriorated paint or visible surface dust, debris, or residue on all painted building components, especially any walls, window, trim, and surfaces that experience friction or impact.
- B. If, according to the central lead screening database maintained by the New Jersey Department of Health or other data deemed appropriate by the Department, at least 3% of children residing in Atlantic Highlands tested, six years of age or younger, have a blood lead level greater than or equal to five (micro) g/dL, or if different, the level set forth at N.J.S.A. 52:27D-437.16, the periodic lead-based paint inspection conducted by the Municipal Lead Paint Inspector or lead evaluation contractor shall be performed through dust wipe sampling.
 - (1) For dust wipe sampling, the Municipal Lead Paint Inspector or lead evaluation contractor shall collect samples by wiping representative surfaces, including floors, interior windowsills, and other similar surfaces, and tested, in accordance with methods approved by HUD.
 - (2) A visual assessment, in accordance with Subsection A above, may be undertaken during the course of the dust wipe sampling.

§ 128-21. Inspection results and lead-safe certification.

- A. If, following inspection, the Municipal Lead Paint Inspector or lead evaluation contractor finds that no lead-based paint hazard exists in a dwelling unit, they shall certify the dwelling unit as lead-safe on the form prescribed by the Department.
 - (1) The lead-safe certification shall be valid for a period of two years from the date of issuance.
 - (a) If, during the two-year certification period, a lead evaluation contractor, lead inspector/risk assessor, a local health department, or a public agency conducts an independent inspection or risk assessment and determines that there is a lead-based paint hazard, the lead-safe certification issued pursuant to this article shall be invalid. A periodic lead-based paint inspection shall be scheduled upon the conclusion of remediation, in accordance with N.J.A.C. 5:28A-2.5(e).
 - (b) Where an independent inspection or risk assessment determines that there is a lead-based paint hazard, the inspector/risk assessor shall inform the municipality of the results of the inspection.

- (c) The lead-safe certification shall not exempt the dwelling from any other law that would require a lead inspection/risk assessment.
 - (2) A copy of the lead-safe certification shall be provided to the owner of the dwelling. If a lead evaluation contractor issues the lead-safe certification, a copy shall also be provided to the municipality at the time it is issued.
- B. If the Municipal Lead Paint Inspector or lead evaluation contractor finds that a lead-based paint hazard exists in a dwelling unit, they shall notify the Department for review of the findings, in accordance with the Lead Hazard Control Assistance Act.
 - (1) If a lead-based paint hazard is identified in an inspection of one of the dwelling units in a building consisting of two or three dwelling units, then the Municipal Lead Paint Inspector or lead contractor shall inspect the remainder of the building's dwelling units, with the exception of those dwelling units that have been certified to be free of lead-based paint or which have a valid lead-safe certification.
- C. The owner of the dwelling unit shall be responsible for remediation of the lead-based paint hazard. Remediation must be conducted consistent with the requirements at N.J.A.C. 5:28A-2.5.

§ 128-22. Remediation.

- A. Where a lead-based paint hazard exists in a dwelling, the owner shall remediate the hazard by using either abatement or interim controls. The owner shall choose the appropriate remediation mechanism.
- B. Interim controls shall be performed, in accordance with the requirements of the United States Department of Housing and Urban Development at 42 U.S.C. § 4851b and detailed within the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.
- C. Abatement work shall be performed in accordance with the requirements in the Lead Hazard Evaluation and Abatement Regulations, N.J.A.C. 5:17.
- D. Any relocation of tenants required pursuant to a remediation shall be undertaken in accordance with applicable law.
- E. Upon conclusion of the remediation, the following procedure shall be followed:
 - (1) If the owner utilized interim controls for remediation, the Municipal Lead Paint Inspector or lead evaluation contractor shall conduct an additional inspection within 60 days of the initial inspection by using dust wipe sampling. If the inspection shows that the hazard no longer exists, the Municipal Lead Paint Inspector or lead evaluation contractor shall certify the unit as lead-safe on the form prescribed by the Department. The certification shall be valid for a period of two years from the date of issuance.
 - (2) If the owner utilized abatement for remediation, and a lead abatement clearance certificate has been issued in accordance with N.J.A.C. 5:17, then the lead-free certificate issued at the final clearance inspection shall exempt the dwelling from future periodical lead-based paint inspections.

§ 128-23. Owner responsibility.

- A. The owner of a dwelling that is subject to this article shall provide to the tenant and to the municipality evidence of a valid lead-safe certification obtained pursuant to this article at the time of

tenant turnover. The owner shall also affix a copy of any such certification as an exhibit to the tenant's lease.

- B. The owner of a multiple dwelling that is subject to this article shall provide evidence of a valid lead-safe certification obtained pursuant to this article, as well as evidence of the most recent tenant turnover; at the time of any cyclical inspection performed pursuant to the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq.
- C. The owner of a dwelling that is subject to this article shall maintain a record of the lead-safe certification, which shall include the name or names of a unit's tenants, if the inspection was conducted during a period of tenancy.
- D. The owner of any dwelling subject to this article shall inform the municipality of all tenant turnover activity to ensure any required inspection may be scheduled.
- E. The owner of a dwelling shall provide a copy of this article, and any lead-safe certifications issued pursuant thereto, along with the accompanying guidance document, Lead-Based Paint in Rental Dwellings, to any prospective owners of the dwelling during a real estate transaction, settlement, or closing.

§ 128-24. Enforcement.

- A. If, upon investigation, the Municipal Lead Paint Inspector determines that a property owner has failed to comply with this article, the owner shall be given a period of 30 days to cure any violation by conducting the required inspection or initiating any required remediation efforts.
- B. If the owner of the dwelling has not cured the violation within that time period, they shall be subject to a penalty, not to exceed \$1,000 per week, until the required inspection has been conducted or the remediation efforts have been initiated. Remediation efforts shall be considered to be initiated when the dwelling owner has hired a lead abatement contractor or other qualified party to perform lead-hazard control methods.

ARTICLE IV

Certificate of Registration of Insurance
[Adopted 5-9-2024 by Ord. No. 10-2024]

§ 128-25. Certificate of Registration of Insurance required.

The owner of any business or rental unit or units in the Borough shall register with the Borough Clerk, within 90 days of the effective date of this article and by January 1 thereafter, a certificate of liability insurance demonstrating compliance with the requirements of P.L. 2022, c. 92 (N.J.S.A. 40A:10A-1 et seq.). The Borough Clerk shall issue a certificate of registration upon payment of the administrative fee.

§ 128-26. Violations and penalties.

Any owner of a business or rental unit or units who fails to register as provided in § 128-25 above shall be subject to a fine of \$500.

Chapter 136**CONSTRUCTION CODES, UNIFORM**

[HISTORY: Adopted by Mayor and Council of Borough of Atlantic Highlands 12-28-1976 by Ord. No. 686; amended in its entirety 2-8-1977 by Ord. No. 688. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Development regulations — See Ch. 150.

Sewer use — See Ch. 285.

Fire prevention — See Ch. 178.

Stormwater control — See Ch. 306.

Flood damage prevention — See Ch. 183.

Stormwater management — See Ch. 311.

§ 136-1. Enforcing Agency; subcode officials.

- A. There is hereby established in the Borough of Atlantic Highlands a State Uniform Construction Code enforcing agency to be known as the "Atlantic Highlands Uniform Construction Code Enforcing Agency," consisting of a Construction Official, Building Subcode Official, Plumbing Subcode Official, Electrical Subcode Official, Fire Protection Subcode Official and such other subcode officials for such additional subcodes as the Commissioner of the Department of Community Affairs, State of New Jersey, shall hereafter adopt as part of the State Uniform Construction Code. The Construction Official shall be the chief administrator of the Enforcing Agency.
- B. Each official position created in Subsection A hereof shall be filled by a person qualified for such position pursuant to P.L. 1975, c. 217, as amended, and N.J.A.C. 5:23, provided that, in lieu of any particular subcode official, an on-site inspection agency may be retained by contract pursuant to N.J.A.C. 5:23. More than one such official position may be held by the same person, provided that such person is qualified pursuant to P.L. 1975, c. 217, and N.J.A.C. 5:23 to hold each such position.
- C. The public shall have the right to do business with the Enforcing Agency at one office location, except for emergencies and unforeseen or unavoidable circumstances.

§ 136-2. Construction Board of Appeals.

- A. There is hereby established a Construction Board of Appeals to hear appeals from decisions by the Enforcing Agency. Such Board shall consist of five members. At least one board member shall be a registered architect or licensed professional engineer of building construction experience, and at least one Board member shall be as qualified as a Plumbing Subcode Official and one as qualified as an Electrical Subcode Official. No more than two Board members shall be selected from the same business or profession. Each Board member shall have had at least three years' experience in construction, design or supervision as a licensed engineer or registered architect or, in the alternative, five years' experience in construction, design or supervision as an architect or engineer with a bachelor's degree in architecture or engineering, respectively, from an accredited institution of higher education or, as a further alternative, 10 years' experience in construction, design or supervision as a journeyman in a construction trade or as a construction contractor, subcontractor or inspector.
- B. Appointment; terms of office.

- (1) The governing body shall appoint the Board members and any alternate members. For the members first appointed, the governing body shall designate the appointees' terms so that one shall be appointed for a term of one year, one for a term of two years, one for a term of three years and two for terms of four years. At the expiration of such terms and thereafter, appointments shall be made for terms of four years. Vacancies shall be filled for the unexpired term.
 - (2) The governing body shall appoint such number of alternates as may be appropriate, for terms not to exceed four years, or may, in the alternative, appoint alternates on a case-by-case basis.
 - (3) No regular or alternative Board member may be a member of the Enforcing Agency, the decisions of which are subject to the review of the Board.
- C. Regular and alternate members will not be compensated unless otherwise ordered by a duly passed resolution of the governing body. Said resolution must contain the rate of compensation and the direction to the appointing authority to establish such compensation.

§ 136-3. Fees. [Amended 3-8-1977 by Ord. No. 691; 3-22-1977 by Ord. No. 694; 10-11-1977 by Ord. No. 710; 4-25-1978 by Ord. No. 723; 1-23-1986 by Ord. No. 868; 6-26-1990 by Ord. No. 970-90; 8-12-1998 by Ord. No. 15-98; 6-12-2002 by Ord. No. 10-2002; 4-9-2003 by Ord. No. 2-2003]⁶⁸

A. Inspection Department.

- (1) State of NJ training fees. This fee shall be in an amount per cubic foot of volume for new buildings and additions as provided in Chapter 168, Article II. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28.
 - (a) No training fee shall be collected for preengineered systems of commercial farm buildings.
 - (b) No training fee shall be collected for permits to perform asbestos or lead abatement.
- (2) General fees.
 - (a) The fee for plan review shall be as provided in Chapter 168, Article II.
 - (b) The fee to be charged for a construction permit will be the sum of the basic construction fee plus all applicable special fees. This fee shall be paid before a permit is issued.
 - (c) The fee to be charged for a certificate of occupancy shall be paid before a certificate is issued. This fee shall be in addition to the construction permit.
 - (d) All fees shall be rounded to the nearest dollar.
 - (e) All fees shall be paid in cash, check or money order payable to the Borough of Atlantic Highlands.
- (3) Fee schedule.
 - (a) The basic construction permit fee shall be the sum of the parts computed on the basis of volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and rating of electrical devices, the number of sprinklers, stand pipes and detectors (smoke and heat) at the unit rates and/or the applicable flat fees

68. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

as provided herein plus any special fees. The minimum fee for a basic construction permit covering any an all of the technical subcodes shall be as provided in Chapter 168, Article II.

- (b) For the purpose of determining estimated cost for renovations, alterations, repairs, and the external utility connection for premanufactured construction, the applicant shall submit to the department such cost data as may be available and produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid, or contract if available, shall be submitted. The Construction Official and/or subcode official shall make the final decision regarding the estimated cost.
 - (c) The fee for an application for a variation in accordance with N.J.A.C 5:23-2.10 and the fee for resubmission of an application for a variation shall be as provided in Chapter 168, Article II.
 - (d) The fee to reinstate lapsed, suspended or revoked permits noted in N.J.A.C. 5:23-2.16(b) or N.J.A.C. 5:23-2.16(f) or otherwise shall be as provided in Chapter 168, Article II, per outstanding subcode.
 - (e) Any fee not specifically contained within this fee schedule shall be based upon the State of New Jersey Department of Community Affairs Fee Schedule.
- B. Building subcode fees shall be as provided in Chapter 168, Article II.
- C. Electric subcode fees.
 - (1) Fees for electrical fixtures and devices shall be as provided in Chapter 168, Article II. Receptacles, fixtures and devices to be counted for these parts are lighting fixtures, wall switches, convenience receptacles, sensors, dimmers, alarm devices, smoke and heat detectors, communications outlets, light standards 8 feet or less in height including luminaries, emergency lights, electric signs, exit lights or similar electric fixtures and devices rated 20 amps or less including motors or equipment rated less than 1 hp or 1 kw.
 - (2) Fees for service panels shall be as provided in Chapter 168, Article II.
 - (3) Fees for transformers/generators shall be as provided in Chapter 168, Article II.
- D. Fire protection subcode fees shall be as provided in Chapter 168, Article II.
- E. Plumbing subcode fees shall be as provided in Chapter 168, Article II.
- F. Permit fees shall be as provided in Chapter 168, Article II.
 - (1) Certificate of occupancy fees shall be as provided in Chapter 168, Article II..
- G. Special fees.
 - (1) A fee for processing/records shall be added to existing fees as calculated in Subsections A through F.
 - (2) The fees for land applications shall be as provided in Chapter 168, Article II.
 - (3) Building permit fees shall be as provided in Chapter 168, Article II.
 - (4) Certificate of occupancy property sale or tenancy change shall be as provided in Chapter 168,

Article II.

- H. Electronic submission of drawings and plans. Applications for construction permits submitting sealed plans and drawings shall be required to submit an electronic copy of all drawings in addition to required paper copies. The file shall be a CADD drawing of the work in a .pdf format as well as a .dwg, .dxf or other generally used format on a 3 1/2-inch diskette or CD and be accompanied by a sealed certification letter from a NJ licensed architect, engineer or surveyor. Upon completion of the project, a copy of as-built plans and drawings shall be submitted together with a sealed certification letter from a NJ licensed architect, engineer or surveyor containing a summary of the changes. The Construction Official may waive this requirement and substitute a fee as provided in Chapter 168, Article II, if electronic submission is unavailable or unduly burdensome to the applicant.
- I. State permit fees. The state permit fee shall replace the state training fee, which shall be computed and assessed in accordance regulations set by the State of New Jersey.
- J. Miscellaneous fees.
 - (1) Record copying fees shall be as provided in Chapter 168, Article II.
 - (2) Postage and packaging material fees shall be as provided in Chapter 168, Article II.
 - (3) Geographic information system fees shall be as provided in Chapter 168, Article II.
 - (4) Waiver of fees. Fees below an amount as provided in Chapter 168, Article II, shall be waived.

§ 136-4. Development regulations. [Added 3-24-2010 by Ord. No. 05-2010]

- A. Policy statement. It is in the best interest of the Borough of Atlantic Highlands and its citizens that development within the Borough is conducted in a manner that is in conformance with applicable zoning regulations and, more particularly, that structures be located on properties in accordance with the regulations of the Borough and in compliance with any plans that have been approved by the Zoning Officer, Construction Official or the Unified Planning Board pursuant to development applications for subdivision, site plan or variance relief to insure their conformance with the Zoning Ordinance and approved plans and to insure that grading of properties being developed is accomplished in a manner that will not have adverse drainage and stormwater impacts upon surrounding lands.
- B. Purpose. It is the purpose of this section to establish controls to insure that buildings and structures are located in accordance with the regulations of the Borough and in accordance with any development permits or approvals received for such structures. It is also the purpose of this section to establish controls to insure that the grading of properties in connection with development is such that there will be no adverse drainage and stormwater impacts upon surrounding parcels.
- C. This section shall be applicable to any development for which approval was required by the Planning Board unless the Planning Board grants a waiver thereof. It shall also apply to the construction of any structure, whether an entirely new improvement or an addition to an existing structure, that does not require Planning Board approval but that has a new foundation exceeding 300 square feet in area unless the Zoning Official grants a waiver thereof.
- D. Foundation location survey. All construction permits issued by the Borough to which this section applies shall be subject to the requirement that the owner or developer provide a foundation location survey prepared by a New Jersey licensed professional land surveyor at the time installation of the foundation is completed. The survey shall indicate the location and height of the foundation and shall

be in accordance with the approved plan. No foundation approval shall be issued without a completed location survey approved by the Construction Official or Zoning Officer. Any deviation from the requirements of the Borough ordinance, permits or approvals granted in connection with the development shall be corrected and an updated foundation survey shall be submitted prior to further work being performed. No further construction or assemblage of materials above the foundation is to occur prior to the approval of the foundation location.

- E. As-built survey. The owner or developer of property being developed with new buildings, structures or additions to existing buildings that exceed 300 square feet in area shall provide a final as-built survey demonstrating that the new construction was built substantially in accordance with the approved plan. The as-built survey shall include site grading, foundation location, foundation height, building height, yard setbacks, tree location, shrubbery and landscape placement. No final certificate of occupancy shall issue without the approval of the as-built survey by the Construction Official. In appropriate circumstances, the Construction Official or Zoning Official may defer review of the as-built survey to the Borough Engineer.
- F. Grading plan.
- (1) Borough approval shall be required for any grading or regrading of a property in all zones in accordance with the following schedule, unless waived by the Zoning Official or Borough Engineer, in making such determination. Notwithstanding the grant of any waiver, such waiver shall be subject to the provisions of Subsection F(9) hereinafter.
 - (a) Criteria to require Borough approval:
 - [1] New building construction: 300 square feet or more.
 - [2] Removing soil from a property: any removal.
 - [3] Fill with soil from outside a property: 10 cubic yards or more.
 - [4] Soil disturbance: 2,000 square feet or more.
 - [5] Height (maximum change in elevation): nine inches or more.
 - (b) The existence of any one of the criteria listed shall require the submission of a grading plan or securing a waiver therefrom.
 - (2) Approval of a site plan or subdivision by the Municipal Agency which shows soil removal, importation or grading, or approval of a grading plan by the Zoning Official, who may seek the advice of the Borough Engineer, shall constitute Borough approval. Borough approval is for the purpose of minimizing impacts anticipated or not anticipated by this chapter to adjacent properties or Borough infrastructure. It is not for the purpose of confirming that the proposed grading is appropriate for meeting the property owner's objectives.
 - (3) If the applicant has received steep slope approval in accordance with § 150-78, grading plan approval is not required.
 - (4) Unless otherwise permitted by the Municipal Agency, or appropriate designee, a grading plan and/or accompanying information must conform to the following minimum standards:
 - (a) Existing and proposed grading information for the entire site, not just the limits of disturbance, must be shown.

- (b) Show grading information on adjacent lots which clearly identifies drainage patterns. A minimum of 20 feet is required on adjacent lots. If the property is flat or if the drainage patterns are poorly defined, additional information may be required.
 - (c) Provide gutter and center line elevations on all abutting roads at fifty-foot intervals. If the lot frontage is 100 feet or less, a minimum of three elevations must be provided along the frontage; one at each property line and one in the center.
 - (d) Existing grading information must be taken from field surveys or identifiable aerial mapping of appropriate resolution (0.5 feet +/-).
 - (e) The source of the existing grading information must be identified.
 - (f) Show the location of all streams, bodies of water, regulated wetlands, or similar environmental features.
 - (g) Show all significant tree specimens four inches or greater in diameter, measured at four feet above the ground; including all dogwood, American holly, and mountain laurel.
 - (h) Show the locations of all existing and proposed principal and accessory structures.
 - (i) Show all existing and proposed subsurface drainage related elements, including but not limited to pipes, inlets, blind drains, wet wells, sump pump discharges, down spout/leader drains, dry well, etc.
 - (j) Show all existing and proposed improvements (principal and accessory) and grading changes with sufficient horizontal and vertical information to identify the limits of grading.
 - (k) Show all proposed soil erosion and sediment control measures, as well as proposed sequence of construction.
 - (l) Include the name and address of the property owner, and, if known, provide the name and address of the contractor, the name and address of the person responsible for the site grading, and a twenty-four-hour emergency contact telephone number.
 - (m) Include the name and the qualifications of the person preparing the plan.
- (5) Wherever grading is to occur, necessary soil erosion prevention and protection consistent with industry best practices should be implemented to ensure work is undertaken with minimum impacts to the existing infrastructure and surrounding properties. As a minimum, a silt fence or barrier of equivalent or better protection must be installed around the limit of disturbance whenever there is a potential to impact an adjacent property or public infrastructure.
- (6) Grading or other disturbance of property shall be accomplished in accord with approved plans, good industry practice and in a manner to avoid damage to any property, including public infrastructure, and to protect the health and safety of the public.
- (7) The applicant shall be responsible to demonstrate to the satisfaction of the Borough Engineer or appropriate designee, that the proposed modification to the site grading or subject development will not adversely impact existing drainage patterns which may have a negative impact on neighboring properties or municipal infrastructure. Increases in stormwater runoff due to development should be mitigated in accordance with industry best practices.

- (8) The Construction Official may seek advice from other Borough Officials to determine how best to address any soil erosion or drainage related problem.
- (9) The Construction Official or Zoning Official may require the property owner to obtain an as-built survey of the completed site grading if any adverse drainage impacts occur to neighboring properties or municipal infrastructure. The property owner shall be responsible for implementing such corrective measures as may be deemed necessary or appropriate by the Borough Engineer, to eliminate the adverse impact upon the neighboring property.

VEHICLES AND TRAFFIC

Chapter 139

VEHICLES AND TRAFFIC

[HISTORY: Adopted by Mayor and Council of Borough of Atlantic Highlands 8-27-1974 by Ord. No. 657. Amendments noted where applicable.]

GENERAL REFERENCES

Taxicabs — See Ch. 327.

ARTICLE I
Definitions

§ 1-1. Words and phrases defined.

Whenever any words and phrases are used in this chapter, the meanings respectively ascribed to them in Subtitle 1 of Title 39 of the Revised Statutes of New Jersey shall be deemed to apply to such words and phrases herein used.

ARTICLE II

Parking

[Amended 2-13-1979 by Ord. No. 740; 11-27-1979 by Ord. No. 759; 5-13-1980 by Ord. No. 765; 2-12-1985 by Ord. No. 845; 3-10-1987 by Ord. No. 892; 9-21-1994 by Ord. No. 55A-94; 8-21-2002 by Ord. No. 11-2002; 7-28-2004 by Ord. No. 12-2004; 5-26-2010 by Ord. No. 12-2010; 2-23-2011 by Ord. No. 03-2011; 9-14-2011 by Ord. No. 16-2011; 7-27-2016 by Ord. No. 08-2016; 12-21-2016 by Ord. No. 10-2016; 9-27-2017 by Ord. No. 09-2017; 4-10-2019 by Ord. No. 04-2019; 12-17-2020 by Ord. No. 08-2020; 3-10-2022 by Ord. No. 03-2022; 8-10-2023 by Ord. No. 10-2023; 9-14-2023 by Ord. No. 12-2023; 1-25-2024 by Ord. No. 02-2024]

§ 2-1. Regulations not exclusive. [Amended 3-28-2024 by Ord. No. 08-2024]

The provisions of this article imposing a time limit on parking shall not relieve any person of the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing or parking of vehicles as set forth in N.J.S.A. 39:4-138 or any other New Jersey statute or as hereinafter provided.

§ 2-2. Parking prohibited at all times. [Amended 3-28-2024 by Ord. No. 08-2024]

No person shall park a vehicle at any time upon any of the streets or parts thereof described in Schedule I attached to and made a part of this chapter.⁶⁹

§ 2-2.1. Parking prohibited in fire zones. [Amended 3-28-2024 by Ord. No. 08-2024]

The locations described in Schedule IA hereof are hereby designated as fire zones, and no vehicle shall be permitted to stop, stand or park therein at any time.⁷⁰

§ 2-3. Parking prohibited during certain times. [Amended 3-28-2024 by Ord. No. 08-2024]

No person shall park a vehicle between the hours specified in Schedule II of any day (except Sundays and public holidays) upon any of the streets or parts of streets described in said Schedule II attached to and made a part of this chapter.⁷¹

§ 2-3.1. Parking regulations for municipal parking lot and other areas. [Amended 3-28-2024 by Ord. No. 08-2024; 8-8-2024 by Ord. No. 13-2024]

A. Parking prohibited during certain hours. No person shall park a vehicle between 3:00 a.m. and 6:00 a.m. in any municipal parking lot:

- (1) In the Railroad Avenue Municipal Parking Lot except with an overnight parking permit issued by the Atlantic Highlands Police Department. Parking with this permit shall be limited to areas designated by the Department. A permit may only be issued to residents, or their guests, for other temporary uses approved by the Department. The Department shall establish rules and procedures for the issuance, renewal and control of permits and permit parking. An administrative fee as provided in Chapter 168, Article II, per year shall be charged; there shall be no charge for handicapped or temporary permits. Overnight parking permits are nontransferable. Permits must be prominently displayed at all times. Permit holders may park their vehicle in either the Railroad Avenue Municipal Parking Lot or Holly Tree Municipal

69. Editor's Note: Schedule I is included in Art. XIII of this chapter.

70. Editor's Note: Schedule IA is included in Art. XIII of this chapter.

71. Editor's Note: Schedule II is included in Art. XIII of this chapter.

Parking Lots. The eight spaces adjacent to the fenced Seastreak lot on the south side of the gate shall be allocated to Seastreak for commuter parking and not subject to time restrictions. Eight spaces adjacent to First Avenue directly behind the Atlantic Highlands Marina sign shall be designated for Borough use. (See Exhibit A for visual description.⁷²)

- (2) On Railroad Avenue.
 - (3) On W. Mount Avenue.
 - (4) In the Holly Tree Municipal Parking Lot except with a permit issued by the Atlantic Highlands Police Department. Parking with this permit shall be limited to areas designated by the Department. A permit may only be issued to residents, or their guests or for other temporary uses approved by the Department. The Department shall establish rules and procedures for the issuance, renewal and control of permits and permit parking. An administrative fee as provided in Chapter 168, Article II, per year shall be charged; there shall be no charge for handicapped or temporary permits. Overnight parking permits are nontransferable. Permits must be prominently displayed at all times. Permit holders may park their vehicle in either the Railroad Avenue Municipal Parking Lot or Holly Tree Municipal Parking Lots.
- B. Limited length of time parking. No person shall park a vehicle for longer than the time permitted, between the hours of 8:00 a.m. and 6:00 p.m., on any day, in the following areas:
- (1) Along the east side of First Avenue; time limit: 10 minutes.
 - (a) The first parking space north of the no-parking area in front of the movie theater, beginning about 215 feet north of the north curblane of E. Mount Avenue.
 - (b) The first parking space south of the no-parking area across from Center Avenue, beginning about 475 feet north of the north curblane of E. Mount Avenue.
 - (c) From the northeast corner of First Avenue and East Mount Avenue, 55 feet to the north end of the first parking space on First Avenue.
 - (2) Along the west side of First Avenue; time limit: 10 minutes.
 - (a) The first parking space south of Center Avenue, beginning about 35 feet south of the south curblane of Center Avenue.
 - (b) The last parking space north of W. Mount Avenue, ending about 35 feet north of the north curblane of W. Mount Avenue.
 - (c) One parking space south of the no-parking zone created by the garage and driveway, beginning about 105 feet south of the south curblane of W. Washington Avenue.
 - (3) Along First Avenue; time limit: two hours.
 - (a) From the north curblane of Garfield Avenue to the harbor, on both sides of the street, any parking space not designated as a ten-minute space.
 - (b) In front of the inactive driveways, with the permission of the property owner.
 - (4) Along the east side of Railroad Avenue; time limit: 15 minutes.

72. Editor's Note: Exhibit A is on file in the Borough offices.

- (a) Beginning at a point 35 feet north of the north curbline of W. Mount Avenue, to a point 84 feet further north.
 - (5) Along the north side of W. Mount Avenue; time limit: 15 minutes.
 - (a) Beginning at a point 30 feet west of the west curbline of Railroad Avenue, to a point 62 feet further west.
 - (6) Along the north side of Bay Avenue; time limit: two hours.
 - (a) Beginning at a point 40 feet west of the west curbline of First Avenue, to West Avenue.
 - (7) Along West Avenue Extension; time limit: two hours (anytime; no overnight parking).
 - (a) The 30 parking spaces, angled and parallel to the west of the West Avenue Extension from Bay Avenue up to 261 feet north from the northern curbline of Bay Avenue.
 - (8) Holly Tree Lot; time limit: six hours, except if an overnight parking permit is issued by the Atlantic Highlands Police Department in accordance with § 139-2-3.1A(4) of the Borough Code.
- C. Parking permitted. Parking will be permitted at all times:
- (1) Along the west side of Avenue A, between Bay Avenue and Harborview Drive.
- D. Loading zone. No person shall park a vehicle except for the loading or unloading of goods and materials:
- (1) Along the east side of Railroad Avenue, beginning at a point 120 feet north of the north curbline of W. Mount Avenue, to a point 130 feet further north.
- E. Electric vehicle charging spaces. These designated spaces shall be clearly marked and identified with signage indicating that they are reserved for electric vehicles while charging.
- (1) The eight parking spaces in the municipal lot adjacent to First Avenue just north of Sutton Walk behind the Atlantic Highlands Marina sign. (See Exhibit A for visual description.⁷³)
 - (2) All vehicles parked in designated EV charging spaces not actively charging are subject to penalties and may be subject to towing at the owner's expense.
- F. Penalties. Unless another penalty is expressly provided by New Jersey statute or municipal ordinance, any person convicted of a violation of any parking regulation of the Borough shall be liable for a penalty of not less than \$25 nor more than \$50; court appearance may be required for repeated violators; and any person or vehicle owner with three or more violations within a twelve-month period shall be required to appear in court and be liable for a penalty of up to \$100 or 10 days of community service, or both.
- G. Parking reserved for employees of the Borough of Atlantic Highlands.
- (1) The following are designated as employee-only parking areas for the time periods indicated:
 - (a) Block 99, Lot 14, located on East Highland Avenue, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

73. Editor's Note: Exhibit A is on file in the Borough offices.

(2) Violators of this subsection will be subject to towing and a fine not to exceed \$100.

H. Parking prohibited during certain hours. No person shall park a vehicle:

(1) Municipal Harbor Tennis Court Lot, west side: the seven parking spaces adjacent to the Harbor Parking and Municipal Gazebo between the hours of 8:00 a.m. and 6:00 p.m.

§ 2-4. Stopping or standing prohibited.

No person shall stop or stand a vehicle between the hours specified in Schedule III of any day (except Sundays and public holidays) upon any of the streets or parts of streets described in said Schedule III attached to and made a part of this chapter.⁷⁴

§ 2-4.1. Loading and unloading.

No person or operator of a vehicle shall stand or park a vehicle for a period of time longer than is necessary for the loading or unloading of passengers or materials than is hereinafter provided. The loading and unloading of passengers or materials shall not consume more than three minutes between the hours specified in Schedule IIIA of any day upon any of the streets described in said Schedule IIIA attached to and made a part of this chapter.⁷⁵

§ 2-5. Parking time limited.

No person shall park a vehicle for longer than the time limit shown in Schedule IV at any time between the hours listed in said Schedule IV of any day (except Sundays and public holidays) upon any of the streets or parts of streets described in Schedule IV attached to and made a part of this chapter.⁷⁶ The provision of this § 2-5, as to the excepting of Sundays and public holidays, shall not be applicable to the areas of Simon Lake Drive set forth in Schedule IV.

§ 2-6. Parking of trucks, tractors, trailers (open or closed), school buses and recreational vehicles prohibited.

The parking of trucks, tractors, trailers (open or closed), school busses or recreational vehicles is prohibited between the hours of 2:30 a.m. and 6:00 a.m. on any street or parts of streets in the Borough of Atlantic Highlands. This section shall not apply to panel trucks, pickup trucks and small open trucks having a gross vehicle weight less than 4 1/2 tons.

§ 2-7. Handicapped parking.

No person shall park a vehicle in any parking space in Schedule XIV attached to and made a part of this chapter⁷⁷ unless said driver shall have special vehicle identification issued by the Director of the Division of Motor Vehicles of the State of New Jersey authorizing said driver to park in a parking space reserved for a physically handicapped person.

§ 2-8. Emergency no parking.

A. During state of emergencies. Upon the declaration of an emergency, there shall be no parking upon

74. Editor's Note: Schedule III is included in Art. XIII of this chapter.

75. Editor's Note: Schedule IIIA is included in Art. XIII of this chapter.

76. Editor's Note: Schedule IV is included in Art. XIII of this chapter.

77. Editor's Note: Schedule XIV is included in Art. XIII of this chapter.

Borough streets, parking lots or sections of such lots, where weather conditions, accidents, road construction, medical, fire or other emergency conditions dictate or require the free flow of traffic or pedestrians. The Chief of Police or, in his absence the ranking police officer, is authorized to declare an emergency and effectuate such temporary parking prohibitions and to direct the posting of "EMERGENCY NO PARKING" signs in or near the area so designated. When in his/her judgment weather conditions, accidents, road construction, medical, fire or other emergency conditions require the removal of vehicles or obstacles which interfere with the free flow of traffic or pedestrians, the Police Department will make a reasonable effort to notify the owner, of any vehicle or obstacle, which has been parked prior to the declaration and designation of the no parking area, and afford them a reasonable time, depending on the circumstances, to move the vehicle or obstacle before a summons may be issued and/or the vehicle removed.

- B. During special events. There shall be no parking upon Borough streets, parking lots or sections of such lots where "EMERGENCY NO PARKING" signs are posted and displayed. The Chief of Police, governing body or the Borough Administrator is authorized to effectuate such temporary parking prohibitions and to direct the posting of "EMERGENCY NO PARKING" signs when, in their judgment, road construction, public celebrations or special public events dictate or require the removal of vehicles or obstacles which interfere with the free flow of traffic or pedestrians in or near the area so designated. Such notice shall be posted at least 72 hours in advance. Upon posting of "EMERGENCY NO PARKING" signs, the Police Department will make a reasonable effort to notify the owner of any vehicle or obstacle which has been parked prior to the posting of the signs and will afford them a reasonable time, depending on the circumstances, to move the vehicle before a summons may be issued and/or the vehicle removed.

§ 2-9. Resident permit parking.

A. Rules and regulations.

- (1) There is hereby established resident permit parking on certain streets or portions of streets as identified in § 2-9F. Parking of vehicles on the streets or portions of the streets identified as so restricted shall be limited to vehicles having been issued a resident parking permit or guest permit for parking on that street and displaying that permit as required herein, or vehicles exempt from such permit requirement as specified herein.
- (2) A resident parking permit in a form as established by the Borough shall be issued upon application to a resident of the restricted street, or restricted portion of the street, who owns or leases a motor vehicle registered to a residential unit located in a solely residential structure which is situated on a lot located on or which abuts a restricted street or restricted portion of a street (hereinafter referred to as a "permitted residential unit"). Application for a resident parking permit for a particular restricted street identified in § 2-9F must be made on a form provided by the Borough. Proof of residency and registration of the vehicle at a permitted residential unit must be presented by a copy of a valid New Jersey driver's license and vehicle registration showing an address at a permitted residential unit. As an alternative to the registration, if the vehicle is leased, a copy of the automobile lease showing the vehicle is leased to the resident of a permitted residential unit may be presented. Completed applications shall be submitted to the Atlantic Highlands Police Department. Applications without a copy of a valid driver's license and vehicle registration/lease demonstrating eligible residency shall not be processed.
- (3) Permit applications shall be available at the Atlantic Highlands Police Department during regular business hours. Permits shall be issued for the duration of the current certificate of

occupancy pertaining to the permitted residential unit, as defined in Subsection A(4) below. There will be no fee for any resident or guest permit.

- (4) Each resident and one vehicle demonstrated as owned and/or leased by that resident of a residential unit with an address at a permitted residential unit shall be entitled to obtain one permit. There shall be no limit to the number of persons/vehicles that can be issued a permit for eligible residents/vehicles from a permitted residential unit. Should the vehicle of a resident registered and issued a resident permit be sold by the resident to a person not residing at a permitted residential unit, or the vehicle is removed from service/operation, during the term of that permit, the resident, upon providing sufficient proof to the Police Department of that sale/removal and the removal/destruction of the permit issued to that vehicle, may be issued a replacement permit for the balance of the term.
 - (5) In addition to resident parking permits to be issued to eligible residents/vehicles, each permitted residential unit shall be entitled to obtain up to five guest permits which shall be effective for the term of the permit ("term guest permit"). Each term guest permit shall be marked as referenced to the particular residential unit and can be assigned/utilized by the residents of that particular unit only to a) the vehicle of a guest while visiting and/or staying with the residents/residential unit or b) the vehicle of a contractor and/or health-care provider performing work/services on that particular residential unit or the occupants of said unit for the duration of the work/services at that unit. Each permitted residential unit may also request and be issued additional temporary guest permits from the Police Department between the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday. These temporary guest permits shall be limited in duration to not more than 72 consecutive hours. There shall be no charge for the issuance of temporary guest permits.
 - (6) For purposes of visibility of the permit and compliance with this section, the resident parking permit must not be blocked or obscured at any time while the vehicle is parked on the restricted street. Any guest parking permit, whether a term guest permit or a temporary guest permit, shall be placed in a visible location on the front dashboard of the parked vehicle or in a location in the vehicle as otherwise specified by the Police Department on the permit, with the residential unit identification and/or date/time of issuance being clearly visible to a police officer or other enforcement officer standing outside and in close proximity to the vehicle.
 - (7) The sale or transfer of a resident parking permit and/or a guest permit, other than the assignment without charge of a guest permit as set forth in § 2-9A(5), is prohibited.
 - (8) The possession and/or display of a parking permit does not exempt the operator and/or vehicle from compliance with all other traffic and/or parking laws or requirements, including, but not limited to, parking too close to stop signs, intersections, driveways, or fire hydrants.
 - (9) As there may be more resident parking permits and/or guest permits issued than the number of available parking spaces on the restricted street, the issuance and/or holding of a resident parking permit or a guest permit for the restricted street does not guarantee the availability of a parking space at any time on the restricted street.
- B. Abuse of permit. Resident parking permits and/or guest permits are subject to revocation by the Borough and/or Police Department for the following:
- (1) If any such resident parking permit is used, or allowed to be used, on any vehicle that the permit was not registered to on its issuance.

- (2) If any such guest permit, either term or temporary, is used, or allowed to be used, on any vehicle that is not an eligible vehicle as per § 2-9A(5) to receive or utilize a guest permit, either term or temporary.
 - (3) The applicant provides any false or inaccurate information and/or documentation for purposes of obtaining said permit.
- C. Reproduction of parking permits prohibited.
 - (1) No person, other than an authorized Borough employee, may:
 - (a) Copy, reproduce or otherwise create a resident parking permit or a guest parking permit, either term or temporary.
 - (b) Create or duplicate a facsimile or counterfeit resident parking permit or guest parking permit, either term or temporary.
 - (c) Display or use, or cause to be used, a resident parking permit and/or guest permit, either term or temporary, that is a copy, counterfeit, or reproduction.
 - (2) No person shall furnish false information or fraudulent documents in connection with the application for a resident parking permit or a guest permit.
- D. Exempt vehicles. The prohibition of vehicles without a resident parking permit and/or guest permit parking on the restricted street shall not apply to the following vehicles:
 - (1) Delivery vehicles bearing the name and address of a delivery business and making a delivery to a residential unit on the restricted street may park in the vicinity of that residential unit while the delivery is being made without a permit.
 - (2) Emergency vehicles, government/municipal vehicles, gas company, electric company, telecommunications and other utility company vehicles, having proper identification on the vehicle, may park on the restricted street without a permit during the period services are being rendered at a residential unit on the restricted street.
 - (3) Health-care providers, with vehicles legibly identified as such, may park without a permit during the period services are being rendered. A health-care provider (being a doctor, nurse, home health aide, physical therapist or other medical professional) without a vehicle legibly identified as such may obtain a temporary guest permit from the Police Department upon proper proof of performing services on the restricted street.
- E. Violations and penalties. The Atlantic Highlands Police Department is authorized and has the authority to issue summonses for violation of this section:
 - (1) The owner and/or operator of any vehicle parked on the restricted street, or restricted portion thereof, without a resident parking permit or guest permit for that street being displayed and visible on the vehicle as set forth in § 2-9A(6) or being an exempt vehicle as per § 2-9D shall be subject to a parking fine of up to \$50.
 - (2) Any person violating § 2-9B shall be subject to a fine of up to \$150 for the first offense and up to \$300 for each subsequent offense thereafter.
 - (3) Any person violating § 2-9C shall be subject to a fine of up to \$300 and shall forfeit any current permit issued to that person/vehicle and the right to use and/or receive a resident parking permit

or a guest permit for a further period of two years.

- (4) In addition to and/or in lieu of a summons, the Police Department, or agents under the direction of the Police Department, shall have the authority in its discretion to remove or impound, or arrange for the removal and impoundment of, any vehicle which is parked on the restricted street without a proper permit being displayed and visible in violation of this section. The costs of said removal/impoundment shall be the responsibility of the vehicle owner/lessee.

F. Permit required to park on certain streets.

- (1) No vehicle shall be parked or cause to be parked (other than exempt vehicles as per § 2-9D) on the following streets, or portion of said streets, as described and listed herein, without an appropriate resident parking permit or guest parking permit for that restricted street, or restricted portion thereof, being issued and displayed in the location on or within the vehicle as required.

Name of Street	Portion	Side
Second Avenue	Between East Mount Avenue and Ocean Boulevard	Both

ARTICLE III
Truck Exclusions

§ 3-1. Trucks over four tons excluded.

Trucks over four tons' gross weight are hereby excluded from the streets or parts of streets described in Schedule V except for the pickup and delivery of materials on such streets, said Schedule V being attached to and made a part of this chapter.⁷⁸

78. Editor's Note: Schedule V is included in Art. XIII of this chapter.

ARTICLE IV
One-Way Streets

§ 4-1. One-way streets designated.

The streets or parts of streets described in Schedule VI attached to and made a part of this chapter are hereby designated as one-way streets in the direction indicated.⁷⁹

79. Editor's Note: Schedule VI is included in Art. XIII of this chapter.

ARTICLE V

Through Streets; Stop and Yield Intersections**§ 5-1. Through streets designated. [Amended 6-24-1998 by Ord. No. 12-98]**

Pursuant to the provisions of N.J.S.A. 39:4-140, the streets or parts of streets described in Schedule VII attached to and made a part of this chapter⁸⁰ are hereby designated as through streets. Stop signs shall be installed on the near right side of each street intersecting the through street except where yield right-of-way signs are provided for in the designations.

§ 5-2. Stop intersections designated.

Pursuant to the provisions of N.J.S.A. 39:4-140, the intersections described in Schedule VIII attached to and made a part of this chapter⁸¹ are hereby designated as stop intersections. Stop signs shall be installed as provided therein.

§ 5-3. Yield intersections designated.

Pursuant to the provisions of N.J.S.A. 39:4-140, the intersections described in Schedule IX attached to and made a part of this chapter⁸² are hereby designated as stop intersections. Yield right-of-way signs shall be installed as provided therein.

80. Editor's Note: Schedule VII is included in Art. XIII of this chapter.

81. Editor's Note: Schedule VIII is included in Art. XIII of this chapter.

82. Editor's Note: Schedule IX is included in Art. XIII of this chapter.

ARTICLE VI
Loading Zones

§ 6-1. Loading zones designated.

The locations described in Schedule X attached to and made a part of this chapter are hereby designated as loading zones.⁸³

83. Editor's Note: Schedule X is included in Art. XIII of this chapter.

ARTICLE VII

Taxi Stands

§ 7-1. Taxi stands designated.

The locations described in Schedule XI attached to and made a part of this chapter are hereby designated as taxi stands.⁸⁴

84. Editor's Note: Schedule XI is included in Art. XIII of this chapter.

ARTICLE VIII

Bus Stops

§ 8-1. Bus stops designated.

The locations described in Schedule XII attached to and made a part of this chapter are hereby designated as bus stops.⁸⁵

85. Editor's Note: Schedule XII is included at the end of this chapter.

ARTICLE IX
Turn Prohibitions

§ 9-1. Left turn prohibitions.

No person shall make a left turn at of the locations described in Schedule XIII attached to and made a part of this chapter.⁸⁶

§ 9-1.1. Right turn prohibitions. [Added 3-10-1987 by Ord. No. 892]

No person shall make a right turn at any of the locations described in Schedule XIII A attached to and made a part of this chapter.⁸⁷

§ 9-2. U-turn prohibitions.

No person shall make a left turn at of the locations described in Schedule XIV attached to and made a part of this chapter.⁸⁸

§ 9-3. No turns.

No person shall make a turn at any of the locations described in Schedule XV attached to and made a part of this chapter.⁸⁹

86. Editor's Note: Schedule XIII is included at the end of this chapter.

87. Editor's Note: Schedule XIII A is included at the end of this chapter.

88. Editor's Note: Schedule XIV is included at the end of this chapter.

89. Editor's Note: Schedule XV is included at the end of this chapter.

ARTICLE IXA
Mid-Block Crosswalks
[Added 11-14-2007 by Ord. No. 25-2007]

§ 9A-1. Establishment.

The following location is hereby established a mid-block crosswalk:

Name of Street	Location
East Highland Avenue [Added 5-26-2010 by Ord. No. 10-2010]	Beginning at a point 230 feet east of First Avenue on the northerly curbline and 227 feet east of First Avenue on the southerly curbline along East Highland Avenue and extending five feet easterly therefrom
First Avenue	At Schoeffling Road, beginning at a point 300 feet south of the southerly curbline of Route NJ 36 and extending 6 feet southerly therefrom

ARTICLE X

Penalties

§ 10-1. Violations and penalties. [Amended 5-27-1986 by Ord. No. 878]

Unless another penalty is expressly provided by New Jersey statute, every person convicted of a violation of a provision of this chapter or any supplement thereto shall be liable to a penalty of not less than \$10 nor more than \$50 or imprisonment for a term not exceeding 15 days, or both.

ARTICLE XI
Effect and Short Title of Ordinance

§ 11-1. Severability.

If any part or parts of this chapter are for any reasons held to be invalid, such decision shall not affect the validity of the remaining portion of this chapter.

§ 11-2. Repealer.

All ordinances or parts of ordinances in conflict with or inconsistent with the provisions of this chapter are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking affect of this chapter.

§ 11-3. Title.

This chapter may be known and cited as the "Traffic Ordinance."

§ 11-4. Amendments.

In the event one or more of the schedules mentioned in this chapter are not attached hereto, this is not by inadvertence but in order to allow for future amendment and supplement of this chapter.

ARTICLE XII
Effective Date

§ 12-1. When effective.

This chapter shall take effect immediately upon its final passage and publication in accordance with law and approval by the Commissioner of Transportation of the State of New Jersey as provided by law.

ARTICLE XIII

Schedules**Schedule I. No Parking.**

In accordance with the provisions of § 2-2, no person shall park a vehicle at any time upon any of the following described streets.

Name of Street	Sides	Location
Avenue A	Both	From Harbor View Drive to Bay Avenue
Avenue D [Added 11-28-1978 by Ord. No. 738]	West	Entire Length
Bay Avenue	Both	From First Avenue to Many Mind Creek
Bayside Drive	Both	Entire length
Cameron Circle [Added 9-14-2011 by Ord. No. 16-2011]	North	From a point starting at the easterly curblin of Bonnie Brae Path to a point ending at the westerly curblin of Hilton Road
Center Avenue	Both	From First Avenue to Railroad Avenue
Center Avenue	South	From Avenue D to West Avenue
Center Avenue [Added 11-22-1988 by Ord. No. 925-88]	North	From Avenue D 100 feet east
Center Avenue [Added 11-22-1988 by Ord. No. 925-88]	South	From Avenue D 100 feet west
Center Avenue [Added 3-27-1996 by Ord. No. 5-96]	North	72 feet west of West Avenue to 150 feet west of West Avenue; 226 feet west of West Avenue to 320 feet west of West Avenue
East Garfield Avenue	South	From Hudson Avenue to its westerly terminus
East Garfield Avenue	South	From the easterly curblin of First Avenue to a point 120 feet east thereof
East Highland Avenue	Both	From Grand Avenue to Ocean Boulevard
East Highland Avenue	North	From the westerly curblin of Grand Avenue to a point 200 feet west thereof
East Highland Avenue	South	From the westerly curblin of First Avenue to a point 100 feet west thereof
East Lincoln Avenue	North	From First Avenue to Third Avenue
East Mount Avenue	North	From First Avenue to Prospect Avenue
East Mount Avenue	South	From a point 100 feet east of the easterly curblin of First Avenue to a point 100 feet west thereof

Name of Street	Sides	Location
East Mount Avenue [Added 6-8-2023 by Ord. No. 08-2023]	West side approach to East Mount Bridge	75 feet from East Mount Bridge
Eighth Avenue	Inner circle	Entire length
First Avenue	Both	From the southerly curblin of Garfield Avenue South to Many Mind Creek
First Avenue	Both	From the southerly curblin of Harbor entrance road to Simon Lake Drive
First Avenue [Added 1-28-1986 by Ord. No. 870]	East	From a point 154 feet north of the northerly curblin of Mount Avenue to a point 54 feet north thereof
Foot of First Avenue [Added 9-12-2018 by Ord. No. 11-2018 ⁹⁰]	West	From a point 13 feet west of fire hydrant and then 57 feet south, between 2 "No Parking Between Signs" signs
Grand Avenue	East	From the southerly curblin of Route 36 to a point 185 feet southerly therefrom
Grand Avenue	West	From East Highland Avenue to Cross Avenue
Grand Avenue	West	From the northerly curblin of Route 36 to a point 125 feet southerly thereof
Highland Place	Both	Entire length
Hill Road	South	From Sears Landing Road to Hill Road
Hill Road	West	From Ocean Boulevard to Hill Road
Hilton Road	Both	From Lawrie Road to Prospect Road and Wayside Drive
Hooper Avenue	South	From Chapin Avenue to Grand Avenue
Hooper Avenue	West	From Chapin Avenue to Ocean Boulevard
Lawrie Road	Both	From Ocean Boulevard to Hilton Road
Leonard Avenue	North	From Avenue C to Bowne Avenue
Ocean Boulevard	Both	From First Avenue to Hill Road
Prospect Avenue	Inner circle	Entire length
Railroad Avenue	East	From a point 250 feet from West Mount Avenue to Center Avenue
Railroad Avenue [Added 7-12-2006 by Ord. No. 10-2006]	East	31 feet from the curblin of West Mount Avenue

90. Editor's Note: This ordinance also provided as follows: "Unless another penalty is expressly provided by NJ Statute or Municipal Ordinance, any person convicted of a violation of any parking regulation of the Borough shall be liable for a penalty of not less than \$25 nor more than \$50; court appearance may be required for repeated violators; any person or vehicle owner with three or more violations within a twelve-month period shall be required to appear in court and be liable for a penalty of up to \$100 or 10 days of community service or both."

Schedule I

ATLANTIC HIGHLANDS CODE

Schedule II

Name of Street	Sides	Location
Seventh Avenue	West	From Mount Avenue to Ocean Boulevard
Simon Lake Drive	Both	From First Avenue to its easterly terminus
South Avenue	South	From the easterly curblines of Avenue D to a point 470 feet east thereof
West Avenue [Added 7-14-2010 by Ord. No. 17-2010]	Both	From State Highway 36 to a point 31 feet north from the northerly curblines of West Garfield Avenue
West Avenue [Amended 2-12-1985 by Ord. No. 845]	East	From West Highland Avenue to Bay Avenue
West Highland Avenue	North	From West Avenue to Avenue B
West Highland Avenue [Added 9-12-2018 by Ord. No. 11-2018 ⁹¹]	South	From First Avenue to a point ending 122 feet west
West Lincoln Avenue	South	From First Avenue to West Avenue
West Lincoln Avenue	South	From the westerly curblines of West Avenue to a point 180 feet west thereof
West Mount Avenue	North	From First Avenue to Railroad Avenue
West Mount Avenue [Added 7-12-2006 by Ord. No. 10-2006]	North	From the westerly curblines of First Ave to Railroad Avenue
West Mount Avenue [Added 7-12-2006 by Ord. No. 10-2006]	South	From a point starting at 115 feet from the westerly curblines of First Avenue to a point 201 feet west
West Mount Avenue [Added 7-12-2006 by Ord. No. 10-2006]	South	The easterly curblines of West Avenue to a point 31 feet east
West Washington Avenue	South	From the easterly curblines of Avenue C to a point 200 feet east thereof
West Washington Avenue [Added 10-9-1979 by Ord. No. 757]	South	From First Avenue to West Avenue

Schedule IA. Fire Zones. [Added 7-27-1982 by Ord. No. 791]

In accordance with § 2-2.1, the following locations are hereby designated as fire zones:

Location	Area
Bayshore Plaza (corner Route 36 and First Avenue)	20 feet from the north, west and south curblines of the building

91. Editor's Note: This ordinance also provided as follows: "Unless another penalty is expressly provided by NJ Statute or Municipal Ordinance, any person convicted of a violation of any parking regulation of the Borough shall be liable for a penalty of not less than \$25 nor more than \$50; court appearance may be required for repeated violators; any person or vehicle owner with three or more violations within a twelve-month period shall be required to appear in court and be liable for a penalty of up to \$100 or 10 days of community service or both."

Schedule II. No Parking Certain Hours. [Amended 12-14-2005 by Ord. No. 33-2005]

In accordance with the provisions of § 2-3, no person shall park a vehicle between the hours specified upon any of the following described streets parts of streets or municipal owned or controlled parking lots:

Name of Street	Sides	Hours	Location
Bay Avenue [Added 6-8-2023 by Ord. No. 08-2023]	North	2:30 a.m. to 7:00 a.m.	First three spaces closest to First Avenue
East Lincoln Avenue	North	8:00 a.m. to 9:00 a.m. Monday to Friday	From the westerly curblineline of Third Avenue to First Avenue
East Washington Avenue [Repealed 7-9-1985 by Ord. No. 855]			
First Avenue	Both	2:30 a.m. to 7:00 a.m.	From Route 36 to Simon Lake Drive
Railroad Avenue [Added 7-12-2006 by Ord. No. 10-2006]	East	2:30 a.m. to 7:00 a.m.	From West Mount Ave to Center Avenue
Sutton Walk [Added 3-27-2019 by Ord. No. 02-2019 ⁹²]	All	2:30 a.m. to 7:00 a.m.	Tennis court parking lot
West Garfield Avenue	Both	2:30 a.m. to 7:00 a.m.	From the westerly curblineline of First Avenue to West Avenue
West Highland Avenue	South	9:00 a.m. to 9:00 a.m. between April 1 and November 30	From a point 210 feet east of Avenue C to many Mind Creek
West Mount Avenue [Added 7-12-2006 by Ord. No. 10-2006]	Both	2:30 a.m. to 7:00 a.m.	From First Avenue to West Avenue

Schedule III. No Stopping or Standing.

In accordance with the provisions of § 2-4, no person shall stop or stand a vehicle between the hours specified upon any of the following described streets parts of streets:

92. Editor's Note: This ordinance also provided as follows: "Unless another penalty is expressly provided by NJ Statute or Municipal Ordinance, any person convicted of a violation of any parking regulation of the Borough shall be liable for a penalty of not less than \$25 nor more than \$50; court appearance may be required for repeated violators; any person or vehicle owner with three or more violations within a twelve-month period shall be required to appear in court and be liable for a penalty of up to \$100 or 10 days of community service or both."

Name of Street	Sides	Hours	Location
East Avenue	Both	2:30 a.m. to 7:00 a.m.	From Simon Lake Drive south to Many Mind Creek
West Highland Avenue	Both	2:30 a.m. to 7:00 a.m.	From First Avenue to West Avenue
West Mount Avenue	Both	2:30 a.m. to 7:00 a.m.	From First Avenue to Railroad Avenue; from First Avenue to West Avenue

Schedule IIIA. Loading and Unloading. [Added 3-10-1987 by Ord. No. 892]

In accordance with the provisions of § 2-4.1, no person or operator shall stand or park a vehicle for loading or unloading of passengers or materials upon any of the following described streets or parts of streets:

Name of Street	Sides	Hours	Location
Simon Lake Drive [Added 9-12-2018 by Ord. No. 11-2018 ⁹³]	North		Open curb cuts starting from a point 925 feet east of the easterly curbline of First Avenue
Simon Lake Drive	South	24 hours a day	Both sides of traffic island in front of Shore Casino

Schedule IV. Parking Time Limited. [Amended 5-23-1978 by Ord. No. 724; 2-12-1985 by Ord. No. 845; 7-9-195 by Ord. No. 855; 12-14-2005 by Ord. No. 33-2005]

In accordance with the provisions of § 2-5, no person shall park a vehicle for longer than the time limit shown upon any of the following streets parts of streets or municipal owned or controlled parking lots:

Name of Street	Sides	Time Limit	Hours	Location
Center Avenue	Both	2 hrs.	All times	From Railroad Avenue to West Avenue
East Highland Avenue	North	1 hr.	10:00 a.m. to 5:30 p.m.	Beginning at a point 35 feet east of the easterly cubrline of First Avenue to a point 265 feet east thereof
East Highland Avenue [Added 10-24-2012 by Ord. No. 12-2012]	North	1 hr.	8:00 a.m. to 6:00 p.m.	Starting 50 feet east of First Avenue and continuing to the point 158 feet east of First Avenue

93. Editor's Note: This ordinance also provided as follows: "Unless another penalty is expressly provided by NJ Statute or Municipal Ordinance, any person convicted of a violation of any parking regulation of the Borough shall be liable for a penalty of not less than \$25 nor more than \$50; court appearance may be required for repeated violators; any person or vehicle owner with three or more violations within a twelve-month period shall be required to appear in court and be liable for a penalty of up to \$100 or 10 days of community service or both."

Schedule IV

VEHICLES AND TRAFFIC

Schedule IV

Name of Street	Sides	Time Limit	Hours	Location
East Washington Avenue [Amended 3-26-2020 by Ord. No. 03-2020]	South	10 mins.	Mon. to Fri. on school days, 7:30 a.m. to 8:30 a.m. and 2:30 p.m. to 3:30 p.m.	From First Avenue to Third Avenue
First Avenue	Both	2 hrs.	8:00 a.m. to 6:00 p.m.	From the northerly curblin of Garfield Avenue to Harbor entrance road
Railroad Avenue	East	15 mins.	All times	From a point 35 feet north of the northerly curblin of West Mount Avenue to public alleyway
Railroad Avenue [Added 7-12-2006 by Ord. No. 10-2006]	East	15 mins.	8:00 a.m. to 6:00 p.m., Monday to Saturday	From a point starting 31 feet west of the westerly curblin of West Mount Avenue to a point 149 feet west, and from a point 161 feet west of the westerly curblin to a point 202 feet west and from a point 214 feet west of the westerly curblin to a point 260 feet west
Simon Lake Drive [Repealed 9-12-2018 by Ord. No. 11-2018]				
Simon Lake Drive [Repealed 9-12-2018 by Ord. No. 11-2018]				
Simon Lake Drive [Repealed 9-12-2018 by Ord. No. 11-2018]				
Simon Lake Drive [Repealed 9-12-2018 by Ord. No. 11-2018]				
Simon Lake Drive [Amended 3-9-2005 by Ord. No. 08-2005; 7-11-2007 by Ord. No. 16-2007]	Block 7 Lots 7 and Lots 8	2 hrs.	8:00 a.m. to 10:00 p.m.	Parking along the area in front of and along the West side of the municipally owned building and along the West side of the accessory storage building directly behind the main building

Schedule IV

ATLANTIC HIGHLANDS CODE

Schedule V

Name of Street	Sides	Time Limit	Hours	Location
West Avenue	East	1 hr.	7:00 a.m. to 6:00 p.m.	From a point 50 feet south of the southerly curbline of First Highland Avenue to a point 35 feet northern of the northerly curbline of Garfield Avenue
West Garfield Avenue [Amended 7-11-2007 by Ord. No. 16-2007]	Both	2 hrs.	8:00 a.m. to 6:00 p.m.	From the westerly curbline of First Avenue to West Avenue
West Highland Avenue	North	1 hr.	7:00 a.m. to 6:00 p.m.	From a point 35 feet west of the westerly curbline of First Highland Avenue to a point 85 feet westerly thereof
West Lincoln Avenue [Added 7-14-2010 by Ord. No. 17-2010]	North	2 hrs.	8:00 a.m. to 6:00 p.m.	From the westerly curbline of First Avenue to a point 104 feet west
West Mount Avenue	North	15 mins.	8:00 a.m. to 6:00 p.m.	From a point 35 feet west of the westerly curbline Railroad Avenue to West Avenue
West Mount Avenue [Added 7-12-2006 by Ord. No. 10-2006]	North	15 mins.	8:00 a.m. to 6:00 p.m., Monday to Saturday	From a point starting at 25 feet from the westerly curbline of Railroad Avenue to a point 85 feet west
West Mount Avenue	South	1 hr.	7:00 a.m. to 6:00 a.m.	From a point 35 feet west of the westerly curbline of First Avenue to a point 100 feet westerly thereof
West Mount Avenue [Added 7-12-2006 by Ord. No. 10-2006]	South	1 hr.	7:00 a.m. to 6:00 p.m.	From the westerly curbline of First Avenue to a point 115 feet west
West Mount Avenue [Added 7-12-2006 by Ord. No. 10-2006]	South	1 hr.	All day	From a point starting at 31 feet east of the easterly curbline of West Avenue to the driveway of 111 First Avenue
West Washington Avenue [Added 7-14-2010 by Ord. No. 17-2010]	North	2 hrs.	8:00 a.m. to 6:00 p.m.	From the westerly curbline of First Avenue to a point 69 feet west

Schedule V. Trucks Over Four Tons Excluded.

In accordance with the provisions of § 3-1, trucks over four tons' gross weight are hereby excluded from the following described streets or parts of streets, except for the pickup and delivery of materials on such streets:

(Reserved)

Schedule VI. One-Way Streets.

In accordance with the provisions of § 4-1, the following described streets or parts of streets are hereby designated as one-way streets in the direction indicated:

Name of Street	Direction	Location
East Lincoln Avenue [Added 8-23-2000 by Ord. No. 7-00]	West	Between Third Avenue and First Avenue; south side, entire length; north side (for 10 minutes) from a point 170 feet east of the easterly curbline of First Avenue to a point 420 feet in an easterly direction
East Washington Avenue	East	From First Avenue to Third Avenue, between September 1 and June 20 of each year
Fourth Avenue	North	From Mount Avenue to Ocean Boulevard
Highland Place	Counter-clockwise	From its easterly intersection with Ocean Boulevard to its westerly intersection with Ocean Boulevard
Leonard Avenue [Added 6-26-1990 by Ord. No. 968-60]	East	From Bowne Avenue to Avenue D
Leonard Avenue [Added 6-26-1990 by Ord. No. 968-90]	West	From Avenue C to Avenue D
Railroad Avenue	North	From Mount Avenue to Center Avenue
Second Avenue	North	From Ocean Avenue to Mount Avenue
Sixth Avenue	South	From Mount Avenue to Ocean Boulevard
Third Avenue	South	From Ocean Boulevard to Mount Avenue

Schedule VII. Through Streets.

In accordance with the provisions of § 5-1, the following described streets or parts of streets are hereby designated as through streets. Stop signs shall be installed on the near right side of each street intersecting the through street except where yield right-of-way signs are provided for in the designations.

Name of Street	Limits
Avenue D	From Center Avenue to its northerly terminus
Avenue D	From the Atlantic Highlands Borough-Middletown Township line to Center Avenue
Bay Avenue	From First Avenue to Avenue D
Center Avenue	From the Middletown Township-Atlantic Highlands Borough line to First Avenue

Name of Street	Limits
East Garfield Avenue	From First Avenue to Grand Avenue
East Highland Avenue	From First Avenue to Grand Avenue
East Lincoln Avenue	From First Avenue to Prospect Avenue
East Mount Avenue	
East Washington Avenue	From First Avenue to Grand Avenue
Grand Avenue	From Route 36 to Ocean Boulevard
West Avenue	From Route 36 to Highland Boulevard
West Highland Avenue	From Avenue D to First Avenue
West Highland Avenue-East Highland Avenue [Added 1-24-1998 by Ord. No. 12-98]	From Avenue D to First Avenue
West Highland Avenue-East Highland Avenue [Added 1-24-1998 by Ord. No. 12-98]	From First Avenue to Grand Avenue
West Highland Avenue-East Highland Avenue [Added 1-24-1998 by Ord. No. 12-98]	From Grand Avenue to Ocean Boulevard (County Road 8) Gaven Road

Schedule VIII. Stop Intersections.

In accordance with the provisions of § 5-2, the following described intersections are hereby designated as stop intersections:

Intersection of	Stop Sign on
Avenue B and South Avenue	South Avenue
Avenue C and South Avenue	South Avenue
East Avenue [Added 7-25-2012 by Ord. No. 08-2012]	At its northern terminus with East Washington Avenue to regulate traffic entering upon East Washington Avenue
East Mount Avenue and Prospect Circle [Added 9-14-2011 by Ord. No. 16-2011]	East Mount Avenue (for westbound traffic)
East Washington Avenue [Added 7-25-2012 by Ord. No. 08-2012]	On both the north and south side of the street at its intersection with East Avenue to regulate both eastbound and westbound traffic
West Highland Avenue and Bowne Avenue	Bowne Avenue

Schedule IX. Yield Intersections.

In accordance with the provisions of § 5-3, the following described intersections are hereby designated as yield intersection, and yield signs shall be installed as follows:

(Reserved)

Schedule X. Loading Zones.

In accordance with the provisions of § 6-1, the following described location are hereby designated as loading zones:

Name of Street	Side	Location
Railroad Avenue	East	From a point 200 feet north of the northerly curbline of West Mount Avenue to a point 50 feet north thereof
West Lincoln Avenue [Amended 7-12-2006 by Ord. No. 10-2006]	South	From a point 50 feet west of the westerly curbline of West Mount Avenue to a point 100 feet north thereof

Schedule XI. Taxi Stands.

In accordance with the provisions of § 7-1, the following described locations are hereby designated as taxi stands:

(Reserved)

Schedule XII. Bus Stops.

In accordance with the provisions of § 8-1, the following described locations are hereby designated as bus stops:

(Reserved)

Schedule XIII. Left Turn Prohibitions.

In accordance with the provisions of § 9-1, no person shall make a left turn at any of the following locations:

Location

East on Marine View Savings and Loan driveway to north on First Avenue

Schedule XIII.A. Right Turn Prohibitions. [Added 3-10-1987 by Ord. No. 892]

In accordance with the provisions of § 9-1.1, no person shall make a right turn at any of the following locations:

Location

North on Shore Casino Westerly Side Roadway to East on Simon Lake Drive

North on Shore Casino Easterly Side Roadway to East on Simon Lake Drive

Schedule XIV. Handicapped Parking Spaces. [Added 2-12-1985 by Ord. No. 845]

- A. In accordance with § 2-7, no person shall park a vehicle in any of the following parking spaces without special vehicle identification:
- (1) The easternmost parking space on the southerly side of West Mount Avenue between Railroad Avenue and First Avenue.
 - (2) Two parking spaces in the Railroad Avenue Municipal Lot to be designated by appropriate signs and pavement markings.
 - (3) Two spaces in the parking lot of the Shore Casino to be designated by appropriate signs and pavement markings.
 - (4) Two parking spaces in the parking lot of the Senior Citizen Recreation Center to be designated by appropriate signs and pavement markings.
 - (5) One space to be assigned by the Harbor Office which will be designated by the erection of signs and appropriate pavement markings.
 - (6) One space on the westerly side of Second Avenue, in front of number five Second Avenue, which will be designated by the erection of signs and appropriate pavement markings. **[Added 11-26-1985 by Ord. No. 866]**

Chapter 144**CURFEW**

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 10-5-1994 by Ord. No. 64-94. Amendments noted where applicable.]

§ 144-1. Preamble.

The Municipal Council deems it necessary and proper in the interests of good government, the protection of persons and property, and the maintenance of order, that the use of the public streets, parks and other public places by minors under the age of 18 years be regulated.

§ 144-2. Hours of curfew.

- A. It shall be unlawful for any minor under the age of 18 years to be upon any public or quasi-public place or upon any public street either on foot or in an automobile or any other vehicle, between the hours of 10:00 p.m. and before 6:00 a.m. on any weekday (Sunday through Thursday) and between the hours of 11:00 p.m. and 6:00 a.m. on any weekend (Friday and Saturday) during the entire calendar year, unless accompanied by the juvenile's parent or guardian or unless engaged in, or travelling to or from, a business or occupation which the laws of this state authorize a juvenile to perform.
- B. It shall be unlawful for a juvenile of any age under 18 years to be in any public place during school hours unless accompanied by a parent or guardian or is carrying written permission from the educational authority.⁹⁴

§ 144-3. Parental responsibility.

It shall be unlawful for any parent, guardian or other person having control or custody of such minor under the age of 18 years to allow or permit such minor to be in any public street or public or quasi-public place, including public streets, after the hour of 10:00 p.m. and before 6:00 a.m. on any weekday (Sunday through Thursday) and between the hour of 11:00 p.m. and before 6:00 a.m. on any weekend (Friday and Saturday) during the entire calendar year, except in the manner and for the purposes specified in this chapter.

§ 144-4. Enforcement; notification of parent.

Any police officer is hereby authorized and empowered to take into custody any minor who may be in the act of violating the provisions of this chapter and shall notify the parent or person having the legal custody and control of the minor of the violation.

§ 144-5. Violations and penalties.

Violators shall be required to perform community service and may be subject to a fine of up to \$1,000. If both the juvenile and the juvenile's parent or guardian are found in violation of this chapter, they shall be required to perform community service together.

§ 144-6. Exceptions.

Nothing in this chapter shall prohibit juveniles from engaging in errands involving medical emergencies,

94. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 144-6

CURFEW

attending extracurricular school activities or activities sponsored by religious or community-based organizations, and other cultural, educational and social events after 10:00 p.m. and before 6:00 a.m.

§ 144-7. Enforcement.

This chapter shall be enforced fairly and nondiscriminantly against all juveniles within the Borough of Atlantic Highlands found to be in public or quasi-public areas during the curfew hours and not falling within any exception outlined in this chapter.

Chapter 156**DRUG-FREE SCHOOL ZONES**

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 8-23-1988 by Ord. No. 922-88. Amendments noted where applicable.]

§ 156-1. Approval of map. [Amended 8-8-2001 by Ord. No. 7-2001]

The attached Atlantic Highlands Borough Drug-Free Zones Map, dated July 11, 2001, is approved and adopted as official finding and record of the location and boundaries of the areas on or within 1,000 feet of school property and on or within 500 feet of public parks and public libraries. The Municipal Clerk shall maintain this map on file, provide a copy of this map and ordinance to the County Clerk and County Prosecutor, without cost, and shall provide and certify a true copy to any person, agency or court for a fee of \$12. This map shall replace all prior maps and Ordinance No. 922-88 shall continue with these amendments.⁹⁵

§ 156-2. Map constitutes official finding and record of boundaries.

The Drug-Free School Zone Map approved and adopted pursuant to § 156-1 of this chapter shall continue to constitute an official finding and record as to the location and boundaries of areas on or within 1,000 feet of property owned by or leased to any elementary or secondary school or school board which is used for school purposes until such time if any that this chapter shall be amended to reflect any additions or deletions with respect to the location and boundaries of school property and Drug-Free School Zones.

§ 156-3. Notification of changes to school property boundaries.⁹⁶

The school board, or the chief administrative officer in the case of any private or parochial school, is hereby directed and shall have the continuing obligation to promptly notify the municipal and county engineers and the municipal and county attorneys of any changes or contemplated changes in the location and boundaries of any property owned by or leased to any elementary or secondary school or school board and which is used for school purposes.

§ 156-4. Copies of map.

The Clerk of the municipality is hereby directed to receive and to keep on file the original of the map approved and adopted pursuant to § 156-1 of this chapter, and to provide at a reasonable cost a true copy thereof to any person, agency or court which may from time to time request such a copy, along with a certification that such copy is a true copy of the map approved and adopted herein and kept on file. It is hereby further directed that a true copy of such map and of this chapter shall be provided without cost to the County Clerk and to the office of the Monmouth County Prosecutor.

§ 156-5. Determinations.

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

- A. It is understood that the map approved and adopted pursuant to § 156-1 of this chapter was prepared and is intended to be used as evidence in prosecutions arising under the criminal laws of this state, and that pursuant to state law, such map shall constitute prima facie evidence of the following:

95. Editor's Note: The map is on file in the Clerk's office.

96. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (1) The location of elementary and secondary schools within the municipality;
 - (2) The boundaries of the real property which is owned by or leased to such schools or a school board;
 - (3) That such school property is and continues to be used for school purposes; and
 - (4) The location and boundaries of areas which are on or within 1,000 feet of such school property.
- B. Except as is otherwise expressly noted on the face of the approved and adopted map, all of the property depicted on the map approved and adopted herein as school property was owned by or leased to a school or school board and was being used for school purposes as of July 9, 1987, that being the effective date of L. 1987, c. 101 (N.J.S.A. 2C:35-7).
- C. Pursuant to the provisions of L. 1988, c. 44, a prosecutor is not precluded from introducing or relying upon any other evidence or testimony to establish a violation of the offense defined in that statute, including use of a map or diagram other than the one approved and adopted pursuant to § 156-1 of this chapter. The failure of the map approved herein to depict the location and boundaries of any property which is, in fact, used for school purposes and which is owned by or leased to any elementary or secondary school or school board, whether the absence of such depiction is the result of inadvertent omission or the result of any changes in the location and boundaries of such property which have not yet been incorporated into a revised approved map, shall not be deemed to be an official finding and record that such property is not owned by or leased to a school or school board, or that such property is not used for school purposes.
- D. All of the requirements set forth in L. 1988, c. 44, concerning the preparation, approval and adoption of a Drug-Free School Zone Map have been complied with.

Chapter 163**EXCAVATIONS**

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 9-9-2015 by Ord. No. 05-2015.⁹⁷ Amendments noted where applicable.]

GENERAL REFERENCES

Development regulations — See Ch. 150.

Stormwater control — See Ch. 306.

Flood damage prevention — See Ch. 183.

Stormwater management — See Ch. 311.

§ 163-1. Permit required.

It shall be unlawful for any person, corporation or other legal entity to dig up, excavate, tunnel, undermine or in any manner break up any street, sidewalk, curb, pavement or other public place or area within the public right-of-way, or any part thereof, or to perform any other operation on any street which in any manner interferes with or disturbs the surface of such street, within the Borough for the purpose of laying, down rails, pipes, mains, conduits, or for any other purpose whatever, unless a written application be first made to and a permit granted by the Borough of Atlantic Highlands, except in an emergency.

§ 163-2. Written application.

A written application for a street/sidewalk/curb opening permit shall be obtained from the Municipal Clerk. The application shall state the name and address of the applicant, the name and address of any contractor doing work on behalf of an applicant, the estimated dates of commencement, completion and restoration of the excavation and such other data as may reasonably be required. The written application shall be signed by the applicant and accompanied by plans or drawings attached to the application, showing the extent of the proposed excavation work, the dimensions and elevations of both the existing ground prior to said excavation and of the proposed excavated surfaces, the location of the excavation work, and the length of time the work will require in which the excavation and restoration provided will be completed.

§ 163-3. Additional permits.

The permittee has the additional responsibility of obtaining a separate permit in accordance with N.J.S.A. 2A:170-69.4 through 2A:170-69.6 when the proposed excavation is located within 200 feet of a gas pipeline. All permits issued by the Borough are subject to the issuance of said separate permit. The applicant is further responsible for contacting all other local utilities to determine whether any property or facilities of the utilities are located in the vicinity of the proposed excavation site, and if so, the applicant is obligated to comply with any statutes or regulations pertaining thereto. All permittees must call the New Jersey Utility Opening Service (New Jersey One-Call at 1-800-272-1000) and obtain clearances and mark out locations before beginning excavation. A copy of the utility mark-out number shall be provided to the municipality, prior to the issuance of the permit, for their records, as well as maintaining a copy on file at the work site. (This requirement is exempted for all major utility providers NJNG/JCP&L who obtain or provided their own mark-out services in the course of their daily business).

97. Editor's Note: This ordinance also repealed former Ch. 163, Excavations, comprised of Art. I, Excavation Permits, adopted 5-8-1934 by Ord. No. 253, as amended, and Art. II, Excavation of Streets, adopted 6-28-1995 by Ord. No. 15-95, as amended.

§ 163-4. Issuance of permit/revocation.

Upon application and payment of fees and deposits for which provision is hereinafter made, the Municipal Clerk, in his/her discretion, may authorize the issuance of a permit to excavate or open the surface of any town road. The permit shall state the name of the applicant, the location and purpose of the opening, the number of days for which the permit shall remain in force and the fee paid. Any permits issued under this article may be revoked at any time, in his/her discretion, by the Borough Administrator, Director of Public Works, the Municipal Engineer and/or for the safety of the general public, the most senior-ranking officer on duty within the Atlantic Highlands Police Department. All street excavation permits issued by the Municipal Clerk shall expire 120 days from the permit issuance date. Upon expiration, the applicant will be required to apply for a new permit, pay appropriate permit fees, and supply all other documentation as required in the initial application.

§ 163-5. Commencement of work/notice.

- A. No openings shall be commenced or completed on weekends, holidays, or outside the normal working hours of 7:00 a.m. to 4:30 p.m., without written permission of the Borough Administrator, Police Chief or his/her authorized representative unless in case of emergency. Failure to provide notice as stipulated herein may result in revocation of the permit and issuance of a stop-work order. The applicant shall be responsible to pay for all overtime costs incurred for inspection of work and for all required traffic control. Permits shall become null and void unless the work is commenced within 120 days of the issuance of said permit unless an extension of time is granted by the Municipal Clerk and/or the Borough Administrator.
- B. The applicant shall give a forty-eight-hour notice to the Municipal Clerk or his/her duly authorized representative prior to making any road openings, except in cases of emergency. No opening shall be commenced on a Saturday, Sunday or a holiday unless in cases of emergency. Once notified, the Municipal Clerk will forward such notice to the Supervisor of Streets and the Atlantic Highlands Police Department. The failure of an applicant to provide the notice required by this chapter shall authorize the Supervisor of Streets and the Atlantic Highlands Police Department to cease, in his/her discretion, for a period of 48 hours, to permit the Supervisor of Streets to inspect the condition of the area prior to any work being commenced and to assign a representative of the Borough to monitor the project in question.

§ 163-6. Traffic.

No work areas shall be closed to traffic without the approval of the Atlantic Highlands Chief of Police or an authorized representative. Proper signage and detour routes must be approved by the Police Chief. Any requirements for traffic control measures will be at his discretion. All arrangements and compensation for the same will be made in accordance with the policies of the Atlantic Highlands Police Department and will be in addition to, and are not governed by, this chapter. The permittee shall take appropriate measures to assure that during the performance of the excavation and restoration work, traffic conditions, as nearly normal as practicable, shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public in coordination with the Atlantic Highlands Police Department. The permittee shall keep all road and street openings guarded at all times and open no greater part of such road or street than shall be reasonably necessary.

§ 163-7. Fees; performance guaranty. [Amended 9-12-2018 by Ord. No. 10-2018]

Performance and maintenance guaranty. A nonrefundable application fee of \$160 for each separate road opening or improvement shall be posted with the Municipal Clerk prior to said application being reviewed

and the request for posting of escrow fees. No work shall commence until those fees have been paid.

- A. Cash repair deposit/performance guarantee. No road opening permit shall be issued until a satisfactory two-year repair deposits/performance guaranty is posted with the Municipal Clerk. These performance guaranties shall be by performance bonds, certified checks or similar cash-equivalent guaranties, with the exception of public utility company guaranties, federal government, the State of New Jersey, the County of Monmouth, or other contractors, who may provide annual performance bonds, in an amount of no less than \$50,000, and in a form approved by the Chief Financial Officer.
- B. Cash repair deposit. A minimum repair deposit of \$500 is required, for any opening less than 20 square feet, to serve as security for the repair and performance of work necessary to put the street in as good a condition as it was prior to the excavation. The deposit will be retained by the Chief Financial Officer for a period of two years from the date of the excavation and pavement repairs are inspected and approved. For any opening over 20 square feet, performance guaranties shall be based at the rate of \$25 per square foot of excavation for the intended work. The entire repair deposit will be returned upon the determination that the permittee has performed the work in conformity with this chapter. The Borough may use any and all of such deposit to pay the cost of inspection and work the Borough performs to restore or maintain the street as herein provided, in the event the permittee fails to adequately perform such work, or their refusal to correct or modify a deficient condition, in which event the amount refunded to the permittee shall be reduced by the amount thus expended by the Borough.

§ 163-8. Insurance requirements/hold harmless.

The applicant must provide a certificate of insurance to the Municipal Clerk indicating liability of not less than \$300,000 for any one person, \$1,000,000 for any one accident, and property damage of not less than \$500,000. The Borough of Atlantic Highlands shall be named as the additionally insured. In cases where the character or nature of the proposed excavation work are such as to present an unusual hazard or a higher-than-normal risk of damage or injury, the Borough Council may require increased amounts of liability and property damage insurance. The applicant, upon securing said permit, agrees that the Borough of Atlantic Highlands, will be held harmless from any and all claims of any nature arising out of the construction/excavation of any road and street opening work covered by said permit. The Borough of Atlantic Highlands, in issuing said permit, shall not assume liability in connection therewith. In the event of any suit or claim be filed against the Borough by reason of the negligence or default of the permittee, or for any other reason directly or indirectly attributable to the permittee's work, upon the Borough giving written notice to the permittee of such suit or claim, any final judgment against the Borough requiring it to pay for such damage shall be conclusive upon the permittee, and the permittee shall be liable for the Borough's costs in connection with such suit.

§ 163-9. Backfilling and restoration of pavement.

- A. It is the expressed desire of the Borough to limit roadway disturbance to the greatest extent possible and to complete all restorations in such a manner as to provide for a stable and safe roadway, sidewalk, and shoulder or lawn area, acceptable to the Borough and to the reasonable satisfaction of the adjacent property owners. In order to avoid unnecessary roadway pavement, sidewalk, shoulder area or disturbance to existing municipal utilities and service lines, the use of directional drill, borings, blowpipe or other acceptable means of utility installation shall be employed wherever possible.
- B. All openings must be backfilled immediately and temporary restoration completed unless otherwise approved to provide for safe passage, and in accordance with applicable restoration standards of this

chapter or as directed by the Director of Public Works, Supervisor of Streets, Borough Administrator, Borough Engineer or the Atlantic Highlands Police Department.

- (1) All excavations less than 100 square feet shall be repaired using infrared thermal bond seamless bituminous pavement patching. If, in the opinion of the Director of Public Works, Supervisor of Streets, Borough Administrator or Borough Engineer, the condition of the existing road surface does not warrant infrared repair, this requirement may be waived.
- (2) The permittee shall be required to replace any facilities, including, but not limited to, curb, pavement, sidewalk, line striping, etc., that are affected by the excavation and restoration work.
- (3) Prior to surface restoration, all trenches shall be backfilled by depositing therein, dense graded aggregate, crushed concrete, or other suitable fill material in layers of not more than eight inches in depth; each layer thoroughly mechanically compacted to a minimum 90% modified proctor density, and, if required by the Director of Public Works, Supervisor of Streets, Borough Administrator or Borough Engineer, flushed with water.
- (4) Whenever an opening is made in a pavement that has a concrete base, the new concrete pavement or foundation shall be made three inches thicker than the original concrete, and a minimum of eight inches. New concrete shall be NJDOT Class B, 4,500 psi and shall be reinforced with three-eighths-inch-round reinforcing steel rods spaced six inches on center or equivalent thereof. In addition, the new concrete pavement or foundation shall be doweled into the surrounding concrete using No. 4 reinforcing steel rods drilled and set a minimum of six inches into the existing concrete on twelve-inch centers and protruding a minimum of 12 inches into the newly poured concrete base.
- (5) All pavement surfaces shall be replaced in accordance with the Borough's specifications governing new construction of such pavements. Said finished pavement surface layers shall conform to the following materials and minimum thicknesses:
 - (a) Major and minor collectors (through streets).
 - [1] Dense graded aggregate sub-base course, six inches thick.
 - [2] Hot mix asphalt, 19M64 base course, six inches thick.
 - [3] Hot mix asphalt, 9.5M64 surface course, two inches thick.
 - (b) Local roads (interior subdivision streets).
 - [1] Dense graded aggregate sub-base course, six inches thick.
 - [2] Hot mix asphalt, 19M64 Base Course, four inches thick.
 - [3] Hot mix asphalt, 9.5M64 Surface Course, two inches thick.
- (6) Following the completion of the work for which the permit is issued, the following procedure for permanent surface restoration shall be strictly adhered to:
 - (a) Following proper compaction, the permittee shall install no less than six inches of dense graded aggregate-sub-base course followed by:
 - [1] Major and minor collectors (through streets), eight inches of bituminous stabilized base course to a height, even with the surface of the existing pavement.

- [2] Local roads (interior subdivision streets), six inches of bituminous stabilized base course to a height, even with the surface of the existing pavement.
- (b) If the distance from the edge of the excavation work area to the existing curb or roadway edge is less than two feet, the permittee shall be required to excavate to the curb and evenly install six inches of dense graded aggregate followed by eight inches of bituminous stabilized base course in the entire area.
- (c) The partially restored pavement shall be allowed to settle for no less than 90 days and no more than 180 days. It shall be the responsibility of the permittee to monitor and maintain the trench to ensure that a depression does not develop. If, at any time during the settlement period, the trench becomes unacceptable in the view of the Director of Public Works, Supervisor of Streets, Borough Administrator or Borough Engineer, the permittee shall be notified of the condition requiring repair, and such repair shall be performed by the permittee within 24 hours of such notification. In the absence of such repair, the Borough reserves the right to use bond fees to repair said trench.
- (d) Following the period of settlement, the permittee shall be required to mill the excavation work area surface as specified in Subsection E above and install no less than two inches of hot mix asphalt 19M64 surface course. The permittee shall also be required to provide a tack coat on all existing bituminous concrete surfaces and hot-poured rubber asphalt joint sealer per Section 908 of the NJDOT Standard Specifications for Road and Bridge Construction.
- (7) After backfill, the trench will be inspected by the Director of Public Works, Supervisor of Streets or his/her duly authorized representative. The entire width of roadway, from curb to curb, will be restored unless otherwise directed. In the event that the roadway has been resurfaced by the Borough during the previous five years, the Borough shall require full lane width or full roadway width restoration for a distance of 10 feet on each side of the roadway opening unless otherwise approved by the Mayor and Borough Council. **[Amended 9-12-2018 by Ord. No. 10-2018]**
- (8) All saw cut edges of the existing bituminous surface shall be tact coated and sealed to form a water tight flexible seal between the two roadway surfaces.
- (9) In the case of a trench or opening in the grass shoulder, the applicant shall restore the top four inches of the trench with material capable of supporting the growth of grass and shall fertilize and seed said surface to provide a stable stand of grass satisfactory to the affected property owner and Borough Administrator.
- (10) Whenever required by the Borough Engineer or the Planning Board, requests for service lateral installations which require crossing the existing paved surface shall be performed utilizing a driven, board or other approved methodology for completion of pipe installation under the paved portion of the road or street without disturbing the surface.
- (11) Road openings and/or trenches involving unusual or special conditions shall be restored in accordance with and pursuant to the direction of the Borough Engineer, Director of Public Works, Supervisor of Streets or his/her duly authorized representative.
- (12) After the completion of final restoration work, the applicant shall request an inspection by the Director of Public Works, Supervisor of Streets or his/her duly authorized representative, at which time it will determine whether the road restoration was completed in a satisfactory

manner or will require additional road restoration. Repair deposits will be held until a subsequent inspection is made by the Director of Public Works, Supervisor of Streets or his/her duly authorized representative, after two years of completion of the permanent roadway, shoulder, sidewalk or lawn restoration. At that time, the Director of Public Works, Supervisor of Streets or his/her duly authorized representative may require additional road restoration to be completed by the applicant prior to release of the repair deposits, or shall request the Municipal Clerk to authorize the release of any remaining escrow fees, project, performance, maintenance bonds, and other surety to the applicant if said restoration is deemed satisfactory. The onus of requesting inspections and release of escrow fees remains on the applicant.

- (13) Upon completion of the utility, roadway, storm sewer pipe and stormwater storage/recharge system, the Design Engineer shall provide an as-built plan and certification of the proposed improvements as applicable.

§ 163-10. Moratorium period.

- A. There shall be established a period of 60 months from the date of completion and acceptance of any roadway reconstructed and funded through the use of NJDOT municipal aid or discretionary aid programs. The only exception shall be in the case of an emergency which threatens the health, safety and welfare of the citizens of the Borough of Atlantic Highlands.
- B. There shall be established a period of 60 months from the date of completion and acceptance of a newly paved, constructed or reconstructed roadway associated with a municipal utility extension, repair, or replacement, except in the following cases:
- (1) New home, commercial or industrial construction on a previously vacant parcel of land, subject to the review and approval by the Atlantic Highlands Planning Board or Borough Council.
 - (2) In the case of an emergency which would threaten the health, safety and welfare of the citizens of the Borough of Atlantic Highlands.
- C. Should an exception or emergency opening and restoration request be granted during the stipulated moratorium period, the restoration requirements, as stated above, shall apply along with the following stipulations:
- (1) All excavations performed within a roadway that has been constructed and/or resurfaced in the last five years shall be repaired using infrared thermal bond seamless bituminous pavement patching.
- D. A twenty-four-month maintenance warranty and guaranty shall apply after permanent pavement restoration has been satisfactorily completed. Should settlement of the restored pavement area occur within a two-year period from the date of permanent pavement restoration, the contractor shall be required to mill and/or excavate and repair the area to the satisfaction of the Borough Engineer and Borough Administrator, consistent with the provisions of this chapter or as directed by the Engineer.

§ 163-11. Curb/sidewalk request provisions.

See also Borough Code § 150-71, Sidewalks and curb ramps.

- A. The primary function of concrete curbs and sidewalks shall be to provide for safe pedestrian movement throughout various parts of the Borough.
- B. All sidewalks in the Borough of Atlantic Highlands shall be re-laid, repaved and kept in repair at the

cost and expense of the owner or owners of lands in front of which the same shall be located.

- C. Concrete sidewalks and curb ramps shall be four inches thick, except across the width of proposed driveways where the concrete sidewalk shall be constructed six inches thick, with No. 6 wire mesh welded six by six. Sidewalk repair and upkeep is the responsibility of the property owner.
- D. Concrete shall have a strength of 4,500 psi at 28 days air entrained conforming to ASTM A-497.
- E. Joint sealer shall be installed every 16 feet with dummy joints every four feet. All sidewalks in the Borough of Atlantic Highlands shall be re-laid, repaved and kept in repair at the cost and expense of the owner or owners of lands in front of which the same shall be located.

§ 163-12. Curb/sidewalk permit fee waiver.

Permit fee may be waived in the case of: installation or repair of sidewalk by, or one acting for, the owner of real property; or installation of new public improvements by a subdivide or side developer in accordance with approved plans, without the cost to the Borough.

§ 163-13. Safety requirements.

The following measures shall be taken to ensure the safety and protection of the traveling public: The permittee shall place, at the work area closed to traffic, barricades, drums, cones, signage or similar warning structures which must be used along the right-of-way. The permittee shall construct and maintain adequate and safe crossings over or around sidewalk areas which are under construction or improvement, to accommodate pedestrian traffic.

§ 163-14. Insurance requirements/hold harmless.

The applicant must provide a certificate of insurance to the Municipal Clerk indicating liability of not less than \$300,000 for any one person, \$1,000,000 for any one accident, and property damage of not less than \$500,000. The Borough of Atlantic Highlands shall be named as the additionally insured. In cases where the character or nature of the proposed excavation work are such as to present an unusual hazard or a higher than normal risk of damage or injury, the Borough Council may require increased amounts of liability and property damage insurance. The applicant, upon securing said permit, agrees that the Borough of Atlantic Highlands will be held harmless from any and all claims of any nature arising out of the construction/excavation of any road and street opening work covered by said permit. The Borough of Atlantic Highlands, in issuing said permit, shall not assume liability in connection therewith. In the event that any suit or claim be filed against the Borough by reason of the negligence or default of the permittee, or for any other reason directly or indirectly attributable to the permittee's work, upon the Borough giving written notice to the permittee of such suit or claim, any final judgment against the Borough requiring it to pay for such damage shall be conclusive upon the permittee, and the permittee shall be liable for the Borough's costs in connection with such suit.

§ 163-15. Violations and penalties.

- A. For the violation of the provisions herein contained, the permit may be revoked and the excavation or opening may be filled by the Borough of Atlantic Highlands and the street restored at the cost and expense of the permittee.
- B. Any person, contractor or utility who commits a violation of this chapter shall, upon conviction thereof, be subject to a fine not exceeding the amount authorized in N.J.S.A. 40:49-5, a term of imprisonment not exceeding the term authorized in N.J.S.A. 40:49-5 or a period of community

service not exceeding the period authorized in N.J.S.A. 40:49-5, or any combination thereof.

- C. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

ATLANTIC HIGHLANDS CODE

Chapter 165

EXTERIOR LIGHTING STANDARDS

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 8-10-2023 by Ord. No. 04-2023. Amendments noted where applicable.]

§ 165-1. Exterior lighting standards.

- A. All exterior lighting in R-1, R-2 and R-3 Zone Districts shall be designed to provide a maximum lighting intensity of five-tenths lumen per square foot (0.50 foot candles) and shall not exceed 0.10 foot candles at any property line. Lighting shall be of a soft or glare-free type and shall not cast an illumination color which shall be distractive, obliterate or obscure the view, be ultraviolet, strobic, pulsating, flashing or of any unnatural kind or create a public nuisance, discomfort or hazard. In addition, all exterior lights shall be installed and operated in compliance with the following standards:
- (1) Every lamp and/or radiant light source having an initial light output of 1,750 lumens or greater must be shielded;
 - (2) All exterior lighting fixtures shall be designed, manufactured, installed and aimed in such manner as to shield glare from reflecting onto adjacent streets, properties, residences or public areas and be dark-sky-compliant. No permitted residential spotlight or floodlight shall be aimed higher than 45° above nadir at the lowest light-emitting point of the light source; and
 - (3) No lamp or radiant light source shall be operated or directed so as to result in light being projected onto a property from an artificial light source not located upon that property;
- B. All lighting fixtures shall conform with all applicable requirements of the BOCA Basic Energy Conservation Code and the Lighting Power Budget Determination Procedure, EMS-1, of the Illuminating Engineer's Society.
- C. The provisions and requirements of other provisions of the Borough Code shall not be affected by this chapter, unless expressly modified herein.
- D. Any person violating the provisions of this chapter, as determined by Code Enforcement, the Police Department and/or the Borough Engineer shall, upon conviction, be subject to a penalty as provided in Chapter 1, Article II, General Penalty, of this Code.

§ 165-2. Repealer.

All ordinances or parts of ordinances which are inconsistent with the provisions of this chapter are, to the extent of such inconsistency, hereby repealed.

§ 165-3. Severability.

Should any section, clause, sentence, phrase or provision of this chapter be declared unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this chapter.

§ 165-4. When effective.

This chapter shall take effect upon final passage, adoption and publication in the manner prescribed by law.

FEES

Chapter 168

FEES

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
Development Regulations
[Adopted 12-1-1993 by Ord. No. 40-93]

§ 168-1. Charge for copies. [Amended 4-9-2003 by Ord. No. 2-2003]

There shall be a charge of \$55 collected for each copy of the ordinance entitled "The Development Regulations of the Borough of Atlantic Highlands," that is supplied by the Borough to any person requesting same.

ARTICLE II
Fee Schedule
[Adopted 2-12-1997 by Ord. No. 4-97]

§ 168-2. Fees enumerated.

The modifications contained herein are hereby adopted:

- A. Fees for services by the office of the Municipal Clerk. Fees shall be charged as follows: **[Amended 5-9-2007 by Ord. No. 07-2007; 2-23-2011 by Ord. No. 03-2011; 7-27-2011 by Ord. No. 11-2011; 10-10-2012 by Ord. No. 11-2012; 6-8-2023 by Ord. No. 09-2023]**

- (1) Fees: **[Amended 1-25-2024 by Ord. No. 04-2024]**

License, Fee or Permit	Fee	Code Location, if any
Adults (alcohol present)	\$175	
	\$225, nonresident	
Bed-and-breakfast establishment license	\$250	Ch. 211, Art. II, § 211-7
Liquor license fee		Ch. 85
Plenary distribution	\$1,000	
Plenary retail consumption/ broad package	\$1,000	
Plenary retail consumption	\$1,000	
Unincorporated club	\$200	
Animal fees		Ch. 97, Art. III
Dog licenses		
One-year license:		
Dog license fee	\$10	
State registration fee	\$1	
Pilot clinic fee	\$0.20	
Animal population control fee for nonsterilized dogs	\$3	
Three-year license:		
Dog license fee	\$30	
State registration fee	\$3	
Pilot clinic fee	\$0.60	
Animal population control fee for nonsterilized dogs	\$9	

License, Fee or Permit	Fee	Code Location, if any
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Any dog not having a valid, current license after the license renewal date shall, in addition to the license fees set forth herein, pay an additional \$5 for the first late month or part of the month and an additional \$1 for each month or partial month thereafter.

Redemption of seized dogs:	If an animal taken into custody and impounded which has a collar or harness with identification of the name and address of any person, or has a registration tag, or has a microchip with an identification number that can be traced to the owner or person charged with the care of the animal, or the owner or the person charged with the care of the animal is otherwise known, the certified animal control officer shall ascertain the name and address of the owner or the person charged with the care of the animal, and serve to the identified person, as soon as practicable, a notice in writing that the animal has been seized and the owner or the person charged with the care of the animal will be liable for all fees incurred, by the municipality, from a licensed kennel, shelter or pound. Any owner or person charged with the care of the animal who refuses or neglects to pay forthwith the costs and charges incident thereto shall be deemed to have violated the provisions of this article and shall be subject to a notice of violation, from the Code Enforcement Officer, Municipal Clerk, Court Administrator or any other individual, corporation or entity that the municipality shall contract with for the responsibility of enforcing this article, and, upon conviction thereof, shall pay a fine of not less than \$100 nor more than is provided in Chapter 1, Article II, General Penalty, of this Code.
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Pot-bellied pig licenses

License	\$10
Late fee	\$2

Record copying fees

Ch. 136

Copy of audio tape	\$5 per tape
Copy of video tape	\$10 per tape
Photographs	
3 x 5	\$1

License, Fee or Permit	Fee	Code Location, if any
8 x 10	\$4	
11 x 14	\$8	
Fees for copies not made by ordinary Borough copying equipment shall be the actual cost of duplication.		
Postage and packaging material fees		Ch. 136
Postage	Actual cost of postage	
Borough-supplied packaging material	Actual cost of the materials, except no fee shall be charged for standard #10 envelopes. If material cost is not readily available, a fee equal to the actual postage shall be charged.	
Geographic information system.		
Copy of existing information or files		
8 1/2 x 11	\$3	
11 x 17	\$6	
Preparation of site-specific file	\$10 per view plus the per-page fee	
There shall be no fee for files or pages prepared at the request of the governing body, Administrator or GIS Coordinator.		
Raffle and bingo fees		Ch. 189
Bingo	\$20 for each bingo held	
Raffles		
On-premises draw raffles	\$20 for each day raffle held	

License, Fee or Permit	Fee	Code Location, if any
Off-premises draw raffles	\$20 per \$1,000 or part thereof of retail value of awarded prize	
Nondraw raffles	\$20 for each wheel or game	
Off-premises draw raffles	\$20 per \$1,000 or part thereof of retail value of awarded prize	
<p>Off-premises draw raffles: A fee of \$20 is due at time the application is filed, and, if the awarded prize exceeds \$1,000 an additional fee of \$20 per \$1,000, or part thereof awarded as a prize is due upon filing of the Report of Operations.</p> <p>All qualified organizations, being sanctioned by, created under the authority of or officially recognized by the governing body of the Borough of Atlantic Highlands may be exempt from the payment of any Municipal Licensing Fee, but shall not be exempt from any payment due the Legalized Games of Chance and Control Commission.</p> <p>Instant scratch-off (state fee: \$150 \$500 per year)</p>		
Massage/bodywork therapy		Ch. 226
Establishment license	\$50	
Therapist license	\$50	
Taxicab license		Ch. 327
Each taxicab, up to a maximum of 4	\$50 per cab per year	
For each taxicab owner's license, which owner has five or more cabs	\$250 per year	
Taxicab driver's license	\$10	
Renewal of a taxicab license	\$10	
License required for arborists	\$25 yearly	Ch. 340
Miscellaneous fees		—
Notary fee	\$1 (free if resident)	
Copy fees	\$0.05 per letter-size page or smaller;	

License, Fee or Permit**Fee****Code Location, if any**

\$0.07 per legal-size
page or larger

(2) Street excavations.

- (a) Permit application fee: \$160. [Amended 9-14-2023 by Ord. No. 11-2023]
- (b) The amount of the cash repair deposit required for openings in streets paved with concrete or bituminous concrete shall be in accordance with the following schedule. Minimum cash repair deposit: \$500 for any opening 20 square feet or less.

Cash Repair Deposit	
Pavement Disturbance (square feet)	Cost Per Square Foot
1 to 20	\$20
21 to 40	\$19
41 to 60	\$18
61 to 80	\$17
81 to 120	\$16
121 to 160	\$15
161 to 200	\$14
201 to 240	\$13
241 to 280	\$12
281 to 320	\$11
321 to 360	\$10
361 to 400	\$9
401 to 440	\$8
441 to 480	\$7
481 to 600	\$6
601 to 700	\$5
701 to 900	\$5
901 to 1,000	\$4
1,001 to 5,000	\$4
5,001 to —	\$3

- (c) For openings over 20 square feet performance guaranties shall be based at the rate of \$25 per square foot of excavation for the intended work.

Pavement Disturbance (square feet)	Cost Per Square Foot
0 to 149	\$1.50
150 to 999	\$1.25
1,000 to 4,999	\$1
5,000 to —	\$0.75

(3) Residential registration, inspection and insurance fees: **[Amended 5-9-2024 by Ord. No. 10-2024]**

(a) Residential landlord registrations: \$25.

(b) Certificate of inspection fee (Ch. 128):

[1] Single family: \$75.

[2] Multi-family: \$75.

[3] Commercial: \$125.

[4] Each additional reinspection: \$25.

(c) Lead-safe certification inspection fee (Ch. 128):

[1] Single family: \$60.

[2] Multi-family: \$60.

[3] Each additional reinspection: \$25.

(d) Certificate of registration of certificate of insurance (Ch. 128): \$30.

B. Fees charged by the Police Department. Fees shall be charged as follows: **[Amended 7-28-2004 by Ord. No. 09-2004; 5-9-2007 by Ord. No. 07-2007; 2-23-2011 by Ord. No. 03-2011; 2-13-2013 by Ord. No. 02-2013]**

Item		Code Location, if any
Alcoholic beverage cards (initial registration and criminal background check and fingerprinting)	\$50	Ch. 85
Replacement of lost or damaged Borough ABC photo identification card	\$15	Ch. 85
Renewal of ABC photo identification card	\$25	Ch. 85
Fingerprinting (fee required by the State of New Jersey for processing state and federal fingerprint cards)	\$50	

Item		Code Location, if any
Municipal Parking Lot permit administrative fee		\$100 yearly; 65 or older \$50 yearly
Peddling, soliciting and canvassing license		\$25
Special duty rates for police officers		§ 50-11C(6)
	Hourly rate payable to police officers (four-hour minimum)	\$75
	Hourly rate payable to police officers for New Year's Day, July 4th, Easter, Thanksgiving and Christmas, Memorial Day	\$112.50
	Hourly surcharge payable to Borough	\$20
	Hourly rate payable to police officers providing court security (two-hour minimum)	\$75
Miscellaneous fees		—
Traffic accident/incident reports		
		\$0.05 per letter-size page or smaller;
		\$0.07 per legal-size page or larger
Legal discoveries		
		\$10 service charge;
		\$1 each page (over 3 pages); \$5 each DVD
Soliciting permit		\$25
Replacement cards		\$7

C. Office of Fire Marshal. Fees as provided for in Chapter 178: **[Amended 2-23-2011 by Ord. No. 03-2011]**

(1) General fees. **[Amended 5-13-2021 by Ord. No. 10-2021]**

License, Fee or Permit		Fee
Annual inspection fee		
	Class I	No charge

License, Fee or Permit		Fee
	Class II	\$25 per year
	Class III	\$35 per year
	Class IV	\$45 per year
	Class V	\$5 per each individual dwelling unit located in the premises Number of dwelling units times \$5 = inspections fee charged per year
Permits shall be obtained from Fire Marshal for any of the activities listed in the N.J.A.C. 5:70-2.7(b) for the issuances of such permits and the following fees shall be collected:		
	Type 1	\$54
	Type 2	\$214
	Type 3	\$427
	Type 4	\$641
Locally mandated permits		
	Burning, heating, melting	\$54 per permit or inspection
Fees for copies of Division of Fire Prevention documents		
	Fire report	\$10
	Certificate of fire code status	\$35 per copy
	Copies of all other documents, including, but not limited to, reports, photographs, statements, etc.	\$6 for the first page or photograph and \$2 for each additional page or photograph of the same report or subject
Application fee for a certificate of smoke detector and carbon monoxide alarm compliance (CSDCMAC)		
	Requests for CSDCMAC received more than 10 business days prior to the change of occupant	\$54
	Requests for a CSDCMAC received four to 10 business days prior to the change of occupant	\$90
	Requests for a CSDCMAC received fewer than four business days prior to the change of occupant	\$161 or as set by the NJDCA Division of Fire Safety/Fire Prevention
Special permits - other permits not covered		

License, Fee or Permit	Fee
	For activities of a non-reoccurring nature Not less than \$54 nor more than \$641 as deemed appropriate by the authority having jurisdiction

(2) Annual inspections fees for non-life-hazard uses.

A Assembly

A-1	Eating establishment under 50	\$42
A-2	Takeout food service (no seating)	\$42
A-3	House of worship	\$42
A-4	Recreation centers, multipurpose rooms, etc., fewer than 50	\$50
A-5	Libraries, condominium centers fewer than 50	\$50
A-6	Senior citizen centers fewer than 50	\$50

B Business/Professional

B-1	Professional use 1 and 2 story less than 5,000 square feet per floor	\$42
B-2	1 and 2 story more than 5,000 square feet less than 10,000 square feet per floor	\$50
B-3	1 and 2 story more than 10,000 square feet	\$75
B-4	3 to 5 story less than 5,000 square feet per floor	\$100
B-5	3 to 5 story more than 5,000 square feet less than 10,000 square feet per floor	\$150
B-6	3 to 5 stories over 10,000 square feet per floor	\$200

C Retail (mercantile)

M-1	1 and 2 story less than 5,000 square feet per floor	\$125
M-2	1 and 2 story more than 5,000 square feet less than 10,000	\$150
M-3	1 and 2 story more than 10,000 square feet per floor	\$175
M-4	3 to 5 story less than 5,000 square feet per floor	\$200
M-5	3 to 5 story more than 5,000 square feet less than 10,000 square feet	\$225

	M-6	3 to 5 story over 10,000 square feet	\$250
	M with the exception of hardware store 3,000 square feet, retail store over 12,000 square feet are life-hazard uses		
D	Manufacturing (factory)		
	F-1	1 and 2 story less than 5,000 square feet per floor	\$75
	F-2	1 and 2 story more than 5,000 square feet less than 10,000 square feet per floor	\$100
	F-3	1 and 2 story more than 10,000 square feet	\$150
	F-4	3 to 5 story less than 5,000 square feet per floor	\$175
	F-5	3 to 5 story more than 5,000 square feet less than 10,000 square feet	\$200
	F-6	3 to 5 story over 10,000 square feet	\$250
	F exception life hazard uses		
S	Storage S-1 (moderate hazard S-1, low hazard S-2)		
	S-1	1 and 2 story less than 5,000 square feet per floor	\$50
	S-2	1 and 2 story more than 5,000 square feet less than 10,000 square feet per floor	\$100
	S-3	1 and 2 story more than 10,000 square feet	\$150
	S-4	3 to 5 story less than 5,000 square feet per floor	\$175
	S-5	3 to 5 story more than 5,000 square feet less than 10,000 square feet	\$200
	S-6	3 to 5 story over 10,000 square feet	\$250
	S exception life hazard uses		
F	Residential (LEA listed with multifamily BHI)		
	Fee is for each building		
	R-1	1 to 6 units	\$42
	R-2	7 to 12 units	\$50
	R-3	13 to 20 units	\$75
	R-4	21 to 50 units	\$100
	R-5	For each additional unit	\$2
	R-1	1 and 2 story less than 5,000 square feet per floor	\$50

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R-2	1 and 2 story more than 5,000 square feet less than 10,000 square feet per floor	\$75
R-3	1 and 2 story more than 10,000 square feet	\$100
R-4	3 to 5 story less than 5,000 square feet per floor	\$125
R-5	3 to 5 story more than 5,000 square feet less than 10,000 square feet	\$150
R-6	3 to 5 story over 10,000 square feet	\$200
Common areas (LEA not listed with RBI) (each building)		
R-1	1 and 2 story less than 5,000 square feet per floor	\$50
R-2	1 and 2 story more than 5,000 square feet less than 10,000 square feet per floor	\$75
R-3	1 and 2 story more than 10,000 square feet	\$100
R-4	3 to 5 story less than 5,000 square feet per floor	\$125
R-5	3 to 5 story more than 5,000 square feet less than 10,000 square feet per floor	\$150
R-6	3 to 5 story over 10,000 square feet	\$200
R-A uses shall be inspected and charged a fee only upon sale or change of tenant		

- D. Fees charged by the Construction Department. The minimum fee for a basic construction permit covering any and all of the technical subcodes shall be \$85. [Amended 2-23-2011 by Ord. No. 03-2011; 10-10-2012 by Ord. No. 11-2012]

License, Fee or Permit	Fee	Code Location, if any
Building subcode plan review fee	20%	Ch. 136
NJ state training fee - new construction and additions	\$0.00371 per cubic foot of volume	Ch. 136
Variation in accordance with N.J.A.C. 5:23-2.10		
Application	\$250	Ch. 136
Resubmission	\$125	Ch. 136
Building subcode fees		Ch. 136
Minimum building subcode fee	\$85	

License, Fee or Permit	Fee	Code Location, if any
New construction or additions	\$0.0039 per cubic foot of building or addition	
Alterations/renovations of existing building or structure	\$40 per thousand dollars of estimated cost of work	
Swimming pools (aboveground)	\$100	
Swimming pools (in-ground)	\$200	
Shed	\$25	
Storage sheds (greater than 200 square feet)	\$125	
Fence installation for pool enclosure	\$85	
Demolition or removal permit	\$150	
Radon abatement	\$85 per unit	
Asbestos removal	\$150	
Lead testing	\$60	
Lead hazard abatement	\$100	
Signs (no permit required for signs installed in accordance with N.J.A.C. 5:23-2. 14(b)6.)	\$85	
Temporary structure (greater than 120 square feet)	\$85	
UCC certificate of occupancy	\$75	
Slope permit (combination of filing and engineer inspection fees)		
Filing fee	\$25	
Inspection fee	\$500	
Renovations, alterations, repairs		
Special construction fee	as per Construction Official	
Water heater replacements/All Disciplines — one fee only	\$35	
Water heater and heating unit replacement combined — one fee only	\$35	
Re-roof		
Commercial/multifamily	\$40 per thousand	
Fences for pool enclosures	\$85	
Awnings	\$25	

License, Fee or Permit	Fee	Code Location, if any
Demolition permits		
Residential	\$150	
Commercial	\$350	
Signs	\$85	
Extension of permit related to vehicles for sale or under repair		Ch. 346
Initial 30-day extension	\$25	
Additional 30-day extension	\$50	
Fire protection subcode		Ch. 136
Minimum subcode fee	\$85	
Storage tank installations for flammable and combustible liquids.		
Tanks up to 500 gallons	\$75	
501 to 1,000 gallons	\$125	
1,001 to 2,000 gallons	\$150	
2,001 to 5,000 gallons	\$200	
5,000 to 10,000 gallons	\$350	
10,001 to 20,000 gallons	\$500	
Over 20,000 gallons	\$750	
Underground fire water mains-standpipe and sprinkler systems		
Underground fire water mains (each building)	\$200	
Standpipe systems	\$300	
Additional standpipe risers	\$150	
Sprinklers		
1 to 20	\$50	
21 to 50	\$100	
51 to 100	\$150	
Over 100: for every 50, or part thereof	\$75	
Fire pumps	\$250	
Jockey/booster pumps	\$125	
Smoke, heat and duct detector and fire alarm panels		
Detectors		

License, Fee or Permit	Fee	Code Location, if any
1 to 15	\$50	
16 to 50	\$100	
51 to 100	\$150	
Over 100: for every 50, or part thereof	\$75	
Fire alarm panels		
1 to 15 devices	\$25	
16 to 50	\$100	
51 to 100	\$150	
Over 100: for every 50, or part thereof	\$75	
Manual fire alarm systems — pull stations		
1 to 5	\$50	
6 to 10	\$100	
11 to 25	\$150	
Over 25: for every 10, or part thereof	\$25	
Emergency lights/exit signs		
1 to 5	\$50	
6 to 10	\$100	
11 to 15	\$150	
21 to 25	\$250	
Over 25: for each light or sign	\$10	
Independent preengineered suppression system (including dry chemical, wet chemical, halon, carbon dioxide, etc.).		
Preengineered suppression system	\$150	
Kitchen exhaust hoods and flammable/combustible liquid exhaust hoods		
Kitchen exhaust hoods	\$250	
Flammable/combustible liquids exhaust hood	\$250	
Incinerators and crematoriums	\$500	

License, Fee or Permit	Fee	Code Location, if any
Gas, masonry and woodburning fireplaces, woodburning stoves and other nonconventional heating devices.		
Fireplaces, stoves and other heating devices	\$50	
Gas- or oil-fired furnaces, boilers and water heaters.		
Furnaces, boilers and water heaters	\$35	
Low-pressure boilers	\$60	
High-pressure boilers (30 psi or higher)	\$150	
Smoke-removal system	\$150	
Elevator/smoke detectors recall systems		
Elevator recall systems	\$100	
Elevators	As per N.J.A.C. 5:23-12 with \$15 surcharge	
Gasoline station tanks and pumps		
New gasoline station-tank installation up to 10,000 gallons and up to six pumps	\$500	
Each additional gasoline tank up to 10,000 gallons (installed at the same time as new installation)	\$100	
Additional gasoline pumps, new or replacement.	\$100	
Replacement gasoline tanks	See tank installation # 1	
Gas- or oil-fired generators.		
Generators	\$75	
Fire department lock box/Knox-Box®		
Lock box	\$25	
Stand pipes — each	\$75	

License, Fee or Permit	Fee	Code Location, if any
Independent engineering system, such as commercial food handling establishments (Ansil type system)	\$75	
Gas- or oil-fired appliance not connected to the plumbing system	\$85	
Commercial kitchen exhaust system	\$100	
Furnace	\$85	
Plumbing subcode		Ch. 136
Minimum subcode fee	\$85	
Fixture/equipment		
Water closet	\$25	
Urinal/bidet	\$25	
Bathtub	\$25	
Lavatory	\$25	
Shower	\$25	
Floor drain	\$25	
Sink	\$25	
Dishwasher	\$25	
Drinking fountain	\$25	
Washing machine	\$25	
Hose bib	\$25	
Other plumbing fixtures	\$25	
Gas piping	\$85	
Fuel oil piping	\$85	
Steam boiler/furnace	\$85	
A/C or refrigeration unit	\$85	
Water heater and heating units	\$85	
Other gas appliances (stove/range/pool heater/fireplace)	\$85	
Sewer pump	\$85 per pump	
Interceptor/separator	\$85	
Backflow prevention device	\$95	
Grease trap	\$85	
Water service connection	\$85	
Active solar system	\$85	

License, Fee or Permit	Fee	Code Location, if any
Special device	\$85	
LPG tanks (aboveground)		
Up to 500 gallons	\$95	
501 to 2,000 gallons	\$125	
LPG tanks (underground)		
Up to 2,000 gallons	\$125	
Lawn sprinklers	\$100	
Water/sewer connection	\$85	
Electrical subcode		Ch. 136
Minimum subcode fee	\$85	
Electrical fixtures		
1 to 25	\$100	
Over 25: for every 25, or fraction thereof	\$35	
Devices over 1 hp/kw, to 10 kw/hp	\$75	
10 hp/kw to 50 kw/hp	\$100	
50 kw/hp to 100 kw/hp	\$125	
100 kw/hp to 150 kw/hp	\$175	
Over 150 kw/hp: for every 50 kw/hp, or fraction thereof	\$50	
Aboveground pools/spas/hot tubs/fountains	\$125	
In-ground pool	\$225	
(Shall include any "required" bonding, and associated equip. such as filter pumps, motors, disconnecting means, switches, required receptacles and heaters, etc., excepting panelboards and underwater lighting fixtures.)		
Area lighting		
1 to 5 standards (greater than 8 feet)	\$40	Ch. 136
Over 5 standards	\$10 each	Ch. 136
Electric appliances, oven, dishwasher, microwave, air conditioner, heaters, water heaters, dryer, range, furnace, exhaust fan (over 1 kw), radon, lawn sprinklers	\$35	Ch. 136

License, Fee or Permit	Fee	Code Location, if any
Annual inspection for commercial swimming pools	\$100	Ch. 136
Nursing home and similar types/yearly electrical inspection	\$150	
Service panels		
100 amps or less	\$125	Ch. 136
101 to 200 amps	\$125	Ch. 136
201 to 300 amps	\$225	Ch. 136
301 to 400 amps	\$325	Ch. 136
301 to 400 amps	\$425	Ch. 136
Over 400 amps: for every 100 amps, or fraction thereof	\$50	Ch. 136
Transformers/generators		
Up to 200 kw	\$125	Ch. 136
201 to 500 kw	\$150	Ch. 136
501 to 800 kw	\$175	Ch. 136
Over 801 kw	\$200	Ch. 136
Reintroduction of service		
Use Group R-5	\$125	
All other Use Groups	\$125	
Electric signs	\$50	
Load management and metering devices	\$75	
Photovoltaic Systems Use Group R-5	\$125	
All other Use Groups	\$175	
Note: Meters, disconnects, panels, inverters, etc., are charged separately under their respective fee schedules and shall be in addition to the fee for a Photovoltaic System.		Ch. 136
Special fees		Ch. 136
A fee for processing/records shall be added to existing fees as calculated for the technical subcodes.		
Land applications		
Subdivision approval	\$50	

License, Fee or Permit	Fee	Code Location, if any
Variance approval	\$20	
Building permit		Ch. 136
Construction permit application	\$10	
Permit update	No charge	
Certificate of approval	No charge	
Certificate of compliance	No charge	
Temporary certificate of occupancy	No charge	
Certificate of occupancy property sale or tenancy change		Ch. 136
Single-family (includes 1 inspection)	\$75	
Multifamily/condo/apartments (includes 1 inspection)	\$75	
Commercial (includes 1 inspection)	\$125	
Each additional reinspection	\$25	
Electronic submission of drawings and plans	No charge	Ch. 136
Temporary change of use	No charge	
Tree removal/tree permits		
1 to 3 trees	\$30	
4 to 7 trees	\$50	
8 to 11 trees	\$75	
12+ trees	\$100	
Tree trimming inspection fee	\$40	
Dumpster permits	\$25	
POD permits	\$25	
Residential landlord registrations	\$25	
Mercantile license fee	\$50 per annum	

- E. Fees charged by the Department of Vital Statistics. Fees shall be charged as follows: **[Amended 7-28-2004 by Ord. No. 09-2004; 5-9-2007 by Ord. No. 07-2007]**

License Fee or Permit	Fee
Marriage application	\$28
(\$25 paid to state — \$3 retained by Borough)	

License Fee or Permit	Fee
Civil union application	\$28
(\$25 paid to state — \$3 retained by Borough)	
Domestic partnership application	\$28
(\$25 paid to state — \$3 retained by Borough)	
Certified marriage/civil union license	\$10
Certificate of domestic partnership	\$10
Certified death record	\$10
Certified birth record	\$10
Burial permit	\$1
Notary public	\$1

- F. Fees charged by the Municipal Judge. Fees shall be charged as follows: **[Added 2-23-2011 by Ord. No. 03-2011]**

Item	Fee	Code Location, if any
Services of Public Defender	Up to \$200	Ch. 44

- G. Fees charged by the Municipal Engineer. Fees shall be charged as follows: **[Added 2-23-2011 by Ord. No. 03-2011]**

Signs	Application Fee	Code Location, if any
Unlighted signs	\$2 per square foot	Ch. 150
Lighted signs	\$4 per square foot	Ch. 150

- H. Fees charged by the Planning Board. Fees shall be charged as follows: **[Added 2-23-2011 by Ord. No. 03-2011]**

- (1) Application for development permit: \$40.
- (2) Subdivision fees.

	Application Fee	Escrow to Be Deposited
Informal review of a concept plan	\$300	\$450
Minor subdivision	\$500	\$450
Preliminary major subdivision	\$250 per lot	Up to 5 lots: \$250 per lot; \$150 per lot thereafter

	Application Fee	Escrow to Be Deposited
Final major subdivision	\$150 per lot	\$100 per lot
If combined preliminary/final approval	\$300	Total of both

(3) Site plan fees. [Amended 5-14-2014 by Ord. No. 07-2014]

	Application Fee	Escrow to Be Deposited
Informal review of a concept plan	\$250	\$400
Minor plan	\$125	\$75
Preliminary plan residential	\$300	\$100 per acre or part thereof and \$75 per dwelling, provided a minimum of \$1,300 shall be deposited
Nonresidential	\$300	\$150 per 1,000 square feet building gross floor area or \$600 per acre or part thereof, provided a minimum of \$1,300 shall be deposited
Final plan residential	\$300	\$45 per acre or part thereof and \$40 per dwelling, provided a minimum of \$1,300 shall be deposited
Nonresidential	\$100	\$150 per 1,000 square feet building gross floor area or \$300 per acre or part thereof, provided a minimum of \$1,300 shall be deposited
If combined preliminary/final approval residential	\$500	\$150 per acre or part thereof and \$110 per dwelling, provided a minimum of \$1,800 shall be deposited

	Application Fee	Escrow to Be Deposited
Site plan not involving any building area	\$125	\$0.03 per square foot of site area being disturbed
Site plan only	\$125	\$450 minimum
Site plan waiver	\$175	\$225
(If waiver denied, the application and escrow may be applied to application and escrow fees for site plan approval)		

(4) Zoning application fee: \$40.

(5) Other submissions.

	Application Fee	Escrow to Be Deposited
Appeals under N.J.S.A. 40:55D-70a	\$100	\$450
Interpretation or special questions under N.J.S.A. 40:55D-70b	\$75	\$450
Hardship variances under N.J.S.A. 40:55D-70c	\$175	\$500 minimum
Use variances under N.J.S.A. 40:55D-70d	\$300	\$1,500 minimum
Permits under N.J.S.A. 40:55D-34 and 40:55D-35	\$175	\$450
Modifications of approved plans without coverage or floor area	\$450	None required
All other modifications of previously approved plans	\$100	\$400
Resubmittal of an application for preliminary or final major subdivision approval where applicant has submitted an incomplete application as deemed by the Administrative Officer	\$150	No further deposit required if deposit as set forth hereinabove is still retained by the Borough; otherwise as set forth hereinabove
Subdivision certification of approval	\$35	None required

	Application Fee	Escrow to Be Deposited
Resubmittal of an application for preliminary or final site plan approval where an applicant has submitted an incomplete application as deemed by the Administrative Officer	\$150	\$400
List of persons within 200 feet	15	None required
(6) Tax Map revision. A fee of \$25 plus \$4 per lot or unit shall be charged for all minor and major subdivisions, residential unit site plans or condominium or cooperative residential or commercial development.		
(7) Request for reapproval or extensions of time.		
(a) Minor subdivisions and site plans: \$65.		
(b) Major subdivisions and site plans: \$125.		
(c) Other applications for development: \$65.		
(8) Certificate of preexisting use: \$65.		
(9) Grading permit application. For engineering review of individual plot house location grading plans for fill over 10 cubic yards: \$125.		
(10) Sidewalk/curb application: \$40.		
(11) Driveway application: \$40.		
(12) Off-street parking application: \$40.		
I. Fees charged by the Water and Sewer Department. Fees shall be charged as follows: [Added 2-23-2011 by Ord. No. 03-2011]		
(1) Turn-on, tapping and connection fees.		

License, Fee or Permit	Fee	Code Location, if any
Fee for water turn-on and turn-off	\$31	Ch. 353
Fee for water turn-on and turn-off due to nonpayment or hazardous condition	\$150	
Water tapping		Ch. 353
Fee for taps up to one inch	\$250	

License, Fee or Permit	Fee	Code Location, if any
Administration fee for inspection of tap not made by Water Department	\$50	
Water Reconnection Fee	\$300	
Sewer connection — service charge for quarterly installment payment	\$50	Chs. 285; 353
Annual inspection fee	\$30	
Sewer tap supervision fee	\$50	Ch. 353
Water connection and inspection fee	\$1,900 + \$100 = \$2,000	Ch. 353
Sewer connection and inspection fee	\$2,950 + \$50 = \$3,000	Ch. 353
Sewer reconnection fee	\$300	

- (2) Water rates. Each unit shall be charged for water use in accordance with the following schedule:

Quarterly Consumption of Water in Gallons	Water Rate Per Quarter Per Unit
From 0 to 3,740	\$60.50
3,741 to 7,481	\$77.55
7,482 to 26,182	\$77.55 plus \$3.79 per gallons over*
Over 26,182	\$194.70 plus \$4.55 per gallons over**

NOTES:

* For each extra 748 gallons over 7,481 gallons.

** For each extra 748 gallons over 26,182 gallons.

- (a) In addition to the charges above to be assessed and paid quarterly for water use, each unit [except for seasonal meters as per § 353-5(B)] shall be assessed and pay a surcharge of \$30 per quarter. This surcharge shall commence as of the first calendar quarter of 2012 (January 01, 2012) and shall expire and end as of the fourth calendar quarter of 2018 (December 31, 2017). The maximum number of payments, per unit, will be 24 (four quarters per calendar year, for six years). **[Added 10-12-2011 by Ord. No. 17-2011; amended 11-10-2015 by Ord. No. 08-2015]**
- (3) The quarterly standby charge for sprinkler service, in addition to quarterly usage, shall be as provided below:

Meter Size (inches)	Charge per Quarter
2 to 4	\$75
6	\$100
8	\$125
10	\$150

(4) Sewer rates.

Quarterly Consumption of Sewer in Gallons	Sewer Rate Per Quarter Per Unit
From 0 to 3,740	\$110
3,741 to 7,481	\$135.30
7,482 to 14,961	\$155.10
14,962 to 26,182	\$174.90
Over 26,182	156% of water charge

(5) Per-annum flat rate for schools.

- (a) January 1, 2008: \$1,480 per annum; \$370 per quarter.
- (b) January 1, 2009: \$1,680 per annum; \$420 per quarter.
- (c) January 1, 2010: \$1,880 per annum; \$470 per quarter.
- (d) January 1, 2011: \$2,080 per annum; \$520 per quarter.

(6) Miscellaneous fees.

- (a) High bill complaint investigation charge: \$27.
- (b) Meter pit pump out: \$27.
- (c) Frozen meter charge: One hour fee based on FEMA schedule.
- (d) Meter test charge: Two hour fee based on FEMA schedule.
- (e) Final read fee: \$27.
- (f) Curb box locate and clean out: \$40.
- (g) Building demolition/lifting inspection fee (includes letter to Building/Water/Sewer Department: \$40.

J. Fees charged by the Special Events Committee. Fees shall be charged as follows:⁹⁸

98. Editor's Note: Former Subsection K, regarding fees charged by the Planning Board, which immediately followed, was repealed 6-8-2023 by Ord. No. 09-2023.

License, Fee or Permit	Fee	Code Location, if any
Special event permit		Ch. 303
Application fee	\$25	

ARTICLE III
Returned Checks
[Adopted 8-13-1997 by Ord. No. 11-97]

§ 168-3. Service charge.

That a service charge in the amount of \$20 shall be imposed on any taxes, fees or other charges due to the Borough of Atlantic Highlands where a check or draft has been submitted to the Borough toward the payment of such taxes, fees or other charges, and such check or draft is returned for insufficient funds. The Mayor and Council authorizes the appropriate Municipal Officer to demand that future payments be tendered in cash or by certified or cashier's check on any account where a check tendered for payment on such account is returned for insufficient funds or other reasons. In addition, the service charge aforesaid may be collected in any manner authorized by P.L. 1990, Chapter 105.

§ 168-4. Determination of amount of charge.

That it is hereby determined that the amount of such service charge is equal to the approximate amount of the Borough's administrative or other related costs where a check or draft has been returned for insufficient funds.

Chapter 173**FIRE INSURANCE CLAIMS**

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 8-28-1979 by Ord. No. 755; amended in its entirety at time of adoption of Code (see Ch. 1, General Provisions, Art. I). Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Development regulations — See Ch. 150.

Fire prevention — See Ch. 178.

§ 173-1. Payment of claims.

No insurance company authorized to issue fire insurance policies in the State of New Jersey shall pay any claim in excess of \$2,500 on any real property located within the Borough of Atlantic Highlands pursuant to a fire insurance policy issued or renewed after adoption of this chapter and filing the same with the State Commissioner of Insurance, until such time as all taxes, assessments, other municipal liens or charges and costs of demolition due and payable appearing on an official certificate of search, shall have been paid either by the owner of such real property or the insurance company pursuant to N.J.S.A. 17:36-8 et seq. unless a municipality shall submit to the insurance company a copy of the resolution adopted pursuant to § 173-2 of this chapter.

§ 173-2. Installment payment of taxes.

The Borough of the Atlantic Highlands may enter into an agreement with the owner of any fire-damaged property to pay in full all delinquent taxes, assessments, other municipal liens or costs of demolition by installments pursuant to N.J.S.A. 54:5-19, or for the redemption of the tax sale lien by installment payments pursuant to Article VII of Chapter 5 of Title 54 of the Revised Statutes, if the Borough of Atlantic Highland is satisfied that the claim for fire damages is to be used to restore or improve the fire damaged property. An insurance company receiving a certified copy of a resolution of agreement from the governing body of the municipality is authorized to make full payment on the claim to the insured purpose.

§ 173-3. Payment except where an appeal is taken.

Unless a resolution as provided above is received by an insurance company writing fire insurance policies within the Borough of Atlantic Highlands, said insurance company is hereby required prior to the payment of any claims for fire damages in excess of \$2,500 to pay the municipality the amount of any liens and costs of demolition appearing on the official certificate and such reported liens or related charges as may be certified to the insurance company; provided, however, that if an appeal is taken on the amount of any lien or charge, other than an appeal on the assessed valuation of real property pursuant to N.J.S.A. 54:3-21, the insurance company shall withhold 75% of the full amount of the lien or charge being contested pending termination of all proceedings at which time such moneys and all interest accruing thereon at a rate paid on interest-bearing accounts in banking institutions and savings and loan associations of the state shall be disbursed in accordance with final order of judgment of the court.

§ 173-4. Filing of chapter.

This chapter shall take effect upon final passage, approval and publication as required by law, provided that the Municipal Clerk shall cause a certified copy of this chapter to be filed with the State Commissioner of Insurance, and this chapter shall not be deemed effective until such time as said filing occurs.

FIRE PREVENTION

Chapter 178

FIRE PREVENTION

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Fire Department — See Ch. 24.

Fire insurance claims — See Ch. 173.

Uniform construction codes — See Ch. 136.

Housing standards — See Ch. 200.

ARTICLE I

Fire Prevention and Hazardous Substances
[Adopted 10-16-1991 by Ord. No. 2-91]**§ 178-1. Administration and enforcement.**

- A. Title. There is hereby adopted for the purpose of providing for fire protection and prevention, and prescribing regulations governing conditions hazardous to life, property and the environment from fire or the use, storage or transportation of hazardous materials that might cause fire or extensive harm to the civilian population of the Borough of Atlantic Highlands, an ordinance known as "The Fire and Hazardous Materials Code of the Borough of Atlantic Highlands."
- B. State codes adopted. Pursuant to the New Jersey Fire Safety Act (N.J.S.A. 52:27D-192 et seq), the New Jersey Uniform Safety Code (N.J.A.C. 5:70-1 et seq), and the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:18-1 et seq), hereinafter referred to as "the Act," "the UFC," and "the UHSA," that these codes shall be locally enforced within the jurisdiction of the Borough of Atlantic Highlands. Supplemental to these statutes shall be codes of the Building Official and Code Administrators International, hereinafter referred to as "BOCA," and the codes and standards of the National fire Protection Association, hereinafter referred to as "NFPA." Wherever there exists inconsistencies between codes, the provisions of the Statutes of New Jersey shall prevail. However, the authority having jurisdiction reserves the right to exceed or minimize the codes where permitted by the Statutes of the State of New Jersey.⁹⁹

§ 178-2. Establishment and organization.

- A. Establishment. The Atlantic Highlands Fire Department is hereby divided into two areas of operation: the Division of Fire Prevention; and the Division of Fire Protection, both of which shall function under the guidance of the Chief of the Fire Department.
- B. Authority having jurisdiction. This article shall be enforced by the Division of Fire Prevention which has been established pursuant to § 178-1 of this article.
- C. Fire Marshal. The Division of Fire Prevention shall be placed under the direct supervision of a Fire Marshal who shall be appointed by the Mayor and Council of the Borough of Atlantic Highlands upon the recommendation of the Fire Chief, the Fire Marshal shall also be designated as the Fire Official pursuant to the UFC. The Fire Marshal shall serve as the Flammable and Combustible Liquids Code Official and the Underground Storage Tank Official pursuant to the NFPA and the UHSA.
- D. Deputy Fire Marshal(s). Such Deputy Fire Marshals or other employees as may be necessary in the Division of Fire Prevention shall be appointed by the Mayor and Council upon the recommendation of the Fire Marshal. The Deputy Fire Marshals shall also be designated as Fire Inspectors pursuant to the UFC.
- E. Term of office. The Fire Marshal and the Deputy Fire Marshal(s) shall serve a term of two years. Vacancies occurring within the Deputy Fire Marshal position shall be filled at the discretion of the Fire Marshal with the approval of the Mayor and Council, to fill the respective unexpired term.
- F. Personnel restrictions. The number of Deputy Fire Marshals shall be limited to one position for each

99. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

2,000 whole mean population of the Borough of Atlantic Highlands. The Fire Marshal shall have the option to reduce the number of Deputy Fire Marshals as the workload demands, upon the approval of the Mayor and Council.

- G. Status and certification. The Fire Marshal and the Deputy Fire Marshals shall be members of the Atlantic Highlands Fire Department and hold valid State of New Jersey certification pursuant to the UFC. [Amended 11-6-1991 by Ord. No. 10-91]¹⁰⁰
- H. Punitive actions. Deputy Fire Marshals and other employees of the Division of Fire Prevention shall be subject to suspension by the Fire Marshal and/or removal by the Mayor and Council of the Borough of Atlantic Highlands for cases of inefficiency, misconduct or violation of the Code of Ethics as outlined in § 178-7 of this article. Each Deputy Fire Marshal or other employee to be so removed shall be afforded an opportunity to be heard by the appointing authority or a designated hearing officer. All decisions rendered by these authorities shall be final upon the employee.

§ 178-3. Duties of the Division of Fire Prevention.

- A. Fire inspections. Periodic fire inspections shall be conducted by the Division of Fire Prevention on the following premises or structures:
 - (1) Life hazard. All "life hazard" uses pursuant to the UFC;
 - (2) Commercial. All privately owned properties used for commercial, retail or industrial uses;
 - (3) Multifamily. All multifamily dwellings comprising three or more units;
 - (4) Municipal. All property owned by any municipality or local authority, agency or commission;
 - (5) County. All property owned or leased by any county, regional authority, agency or commission (this responsibility being concurrent with that of the county enforcement agency);
 - (6) Federal and state. All property owned or leased by the United States government or the State of New Jersey or any of their boards, commissions, agencies or authorities.
- B. Fire investigation. The Division shall have jurisdiction over the investigation of all fires which occur within the Borough of Atlantic Highlands (concurrent with local and county law enforcement agencies in case of criminal occurrences), reporting directly to the Chief of the Atlantic Highlands Fire Department.
- C. Juvenile fire prevention. The Division shall adopt a program to prevent and seek treatment for juvenile fire-setters in cooperation with other local and county agencies.
- D. Public education. The Division shall be responsible for establishing and conducting programs for the promotion of fire safety, fire prevention and hazardous materials awareness.
- E. Plan review. The Division shall be given the opportunity to review plans submitted to the Borough Construction Code Official for renovation to or new construction of structures within the Borough of Atlantic Highlands prior to issuance of permits and making inspections of such structures prior to occupancy.
- F. Civil disaster. The Division shall assist the Office of Emergency Management during times of civil disaster or other emergency.

100. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- G. Public assistance. Upon the request of the Chief of the Atlantic Highlands Police Department or his duly appointed staff officers, the Division will assist in the mitigation of any adverse condition within the jurisdiction of the Division, that will ensure public safety.
- H. Right to know. The Division shall serve the Atlantic Highlands Fire Department as the instrument of record for the State of New Jersey Department of Environmental Protection, "Community Right-To-Know Survey" documentation.
- I. Ordinance amendments. The Division may make recommendations for appropriate amendments to the ordinances and other rules and regulations of the Borough of Atlantic Highlands relating to fire prevention, protection and hazardous materials use, storage, manufacture and transport within the Borough of Atlantic Highlands.
- J. Collection of assessments and fines. The Division shall be responsible for the levying and collecting of assessments and fines that are applicable to the enforcement of the UFC or this article. If an administrative penalty order for a violation of this article is not satisfied by the 30th day after issuance, the penalty may be sued for and recovered in the name of the Borough of Atlantic Highlands by the Division in a civil action by summary proceeding pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-10 et seq.) in the Municipal Court of the Borough of Atlantic Highlands. All monies so recovered shall be paid into the Treasury of the Borough of Atlantic Highlands and shall be appropriated for the enforcement of this article and the maintenance of the Division of Fire Prevention.¹⁰¹
- K. Recordkeeping. The Division shall be responsible for the maintenance of a complete and appropriate record system.
- L. Other duties as assigned. The Division shall perform such other public safety duties as may be assigned by the Chief of the Borough of Atlantic Highlands Fire Department or the Fire Marshal.

§ 178-4. Legal actions.

- A. Representation. Upon demonstration of need, the Borough of Atlantic Highlands shall provide legal representation from the Borough Attorney, or his designee, to the members of the Division in matters concerning enforcement of the UFC or this article.
- B. Appeals. Any person aggrieved by any ruling, action, order or notice of the Division, as it relates to the UFC, shall have the right to appeal such ruling, action, order or notice to the Monmouth County Construction Board of Appeals or, when applicable, appeal pursuant to the rules promulgated under the Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq.).

§ 178-5. Required inspections and fees.

- A. Requirements. In addition to the inspections and fees provided for pursuant to the UFC and the regulations promulgated by the State of New Jersey, Department of Community Affairs, additional inspections and fees shall be required in the manner provided for in Subsections B through G, inclusive.
- B. Classification. All premises or structures not classified by the UFC are hereby classified as follows:
 - (1) Class I inspections.

101.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (a) Schools: All schools;
 - (b) Churches: All houses of worship.
- (2) Class II inspections.
 - (a) Private. All privately owned properties except owner-occupied one- or two-family dwellings;
 - (b) Business under 10,000 square feet. All business use buildings less than 10,000 square feet;
 - (c) Restaurants under 50. All eating establishments with a maximum occupancy load of less than 50 persons;
 - (d) Mercantile under 12,000 square feet. All mercantile uses of less than 12,000 square feet;
 - (e) Factory under 2,500 square feet. All factory uses of less than 2,500 square feet;
 - (f) Storage under 2,500 square feet. All storage uses of less than 2,500 square feet.
- (3) Class III inspections.
 - (a) Mixed under 10,000 square feet. All mixed-use buildings under 10,000 square feet;
 - (b) Business over 10,000 square feet. All business uses of more than 10,000 square feet but less than 20,000 square feet;
 - (c) Factory over 2,500 square feet. All factory uses of more than 2,500 square feet but less than 20,000 square feet;
 - (d) Apartments. All multiple dwellings from three to 12 units.
- (4) Class IV inspections.
 - (a) Mixed over 10,000 square feet. All mixed-use buildings over 10,000 square feet;
 - (b) Business over 20,000 square feet. All business uses exceeding 20,000 square feet;
 - (c) Storage over 20,000 square feet. All storage uses exceeding 20,000 square feet;
 - (d) Factory over 20,000 square feet. All factory uses exceeding 20,000 square feet ("mini" storage facilities shall be calculated on the total aggregate square footage).
- (5) Class V inspections.
 - (a) Apartments over 12. All multiple dwellings, 13 units and above.
- C. Inspection frequency. All inspections of structures classified in Subsection B shall be performed periodically to determine compliance with the provisions of the UFC and this article but not less than as specified hereinafter.
 - (1) Class I through Class IV: once every 12 months;
 - (2) Class V: once every six months. **[Amended 11-6-1991 by Ord. No. 10-91]**
- D. Additional annual inspection fees shall be as provided in Chapter 168, Article II.¹⁰²

- E. Permits. Permits shall be obtained from the Fire Marshal for any of the activities listed in N.J.A.C. 5:70-2.7(b). For issuance of such permits and on-site inspection(s), the fees as provided in Chapter 168, Article II, shall be paid by the owner or applicant.¹⁰³
- F. Permits, locally mandated. Permits shall be obtained from the Fire Marshal for the following activities not included in the UFC. For issuance of such permits, and on-site inspection(s), a fee of as provided in Chapter 168, Article II, per permit or inspection shall be collected.¹⁰⁴
 - (1) Burning. Reoccurring burning, welding or sweating operations in conjunction with the construction of large structures 12,000 square feet or more;
 - (2) Heating. The temporary use of any liquid- or gas-fired heating unit on/at any construction site;
 - (3) Melting. The use of any liquid- or gas-fired flame producing device to reduce solid building materials to a liquid state for application during construction of any structure.
- G. Copy of documents, fees. Such fees as are provided in Chapter 168, Article II, are to be charged for copies of Division of Fire Prevention documents.¹⁰⁵
- H. Special permits. The Fire Marshal is empowered to issue special permits for activities of a nonreoccurring nature not covered in the permit sections of this article. However, no such permit shall be granted without maximized assurance of the safety of the public. The fees for such permits shall be as provided in Chapter 168, Article II.¹⁰⁶

§ 178-6. Technical amendments.

- A. Smoke detectors. In addition to those requirements mandated by the UFC, the following are required within the Borough of Atlantic Highlands:
 - (1) Mixed uses. Any mixed use occupancy with apartments above or attached shall have operating, hard wired smoke detectors in all common areas and hallways. These detectors shall all sound simultaneously when any one detector is activated.
 - (2) New construction. All new structures erected within the Borough of Atlantic Highlands shall comply with the smoke detector requirements of the UFC or this article.
 - (a) Exception. Any structure classified under § 311.0 of the BOCA National Building Code is exempted from this requirement.
 - (3) Renovation of existing structures. Any existing structure renovated or reconditioned in a dollar value in excess of 50% of its assessed valuation (excluding land) shall comply with the installation requirements for smoke detectors.
 - (4) One- and two-family dwellings. Residential one- and two-family dwellings shall not be occupied after being sold or rented unless smoke detection devices are installed and operable. Each dwelling unit shall have a minimum of one detector for each level of occupancy and one placed at a distance not greater than 15 feet from the main heating plant. In dwellings where the

102.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

103.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

104.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

105.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

106.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

heating plant is in a confined space, a fixed temperature detector (heat) shall be utilized.
[Amended 11-6-1991 by Ord. No. 10-91]

- (5) Installation requirements. The installation requirements for hardwired smoke detectors shall conform to the NFPA Standard 74-1989 and shall be approved by the Fire Subcode Official of the municipality. **[Amended 11-6-1991 by Ord. No. 10-91]**
- (6) Tampering. It shall be unlawful to tamper with, disconnect, interrupt, or remove from service any smoke-detection device or smoke-detection alarm system without prior notice to, and approval of the authority having jurisdiction.
- (7) Penalties. The penalty for any violation of shall be \$100 for the first offense, \$500 for the second offense, and \$1,000 for each offense thereafter.
- (8) Use of reflective symbols on engineered lumber.¹⁰⁷
 - (a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

ENGINEERED LUMBER — Prefabricated I-joists, truss joists, truss rafters, and laminated beams and studs.

REFLECTIVE SYMBOL — An emblem made of reflective material, in the shape and form designed by the Atlantic Highlands Fire Department, containing information identifying a structure as containing engineered lumber.

STRUCTURE — A combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land.
 - (b) The Borough Construction Official and Fire Official shall determine if a structure contains engineered lumber. All structures containing engineered lumber must have a reflective symbol affixed to an electrical meter serving the structure. The reflective symbol shall be applied by the Construction Official or Fire Official and shall be a condition of the issuance of a certificate of occupancy.
 - (c) The reflective symbol shall be in the form designed by the Atlantic Highlands Fire Department and will contain lettering to identify the location of any engineered lumber in the structure.
 - (d) This subsection shall apply to all structures, whether residential, commercial or otherwise, including structures existing at the time of the effective date of this article.
 - (e) This subsection shall be enforced by the Construction Official and Fire Official of the Borough of Atlantic Highlands.
 - (f) Any person violating this article by refusing to use the reflective symbol or by removing or tampering with the reflective symbol shall be subject to a fine in an amount of \$25 per violation. Each day that a violation continues shall be deemed to be a separate and distinct offense.
- (9) Key boxes; security padlocks; security caps.¹⁰⁸

107.Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

108.Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (a) Mandatory key boxes for fire suppression and standpipe systems. When a building within the Borough of Atlantic Highlands is protected by an automatic fire suppression or standpipe system, it shall be equipped with a key box. The key box shall be at a location approved by the Borough of Atlantic Highlands Fire Subcode/Fire Official. The key box shall be a UL type and size approved by the Fire Subcode/Fire Official.
- (b) Mandatory key boxes for automatic alarm systems. When a building is protected by an automatic alarm system and/or access to or within a building, or an area within that building, is unduly difficult because of secured openings, and where immediate access is necessary for lifesaving or firefighting purposes, the Fire Subcode/Fire Official may require a key box to be installed at a location approved by the Borough of Atlantic Highlands Fire Subcode/Fire Official. The key box shall be a UL type and size approved by the Fire Subcode/Fire Official.
- (c) Key tamper box switch. The Fire Subcode/Fire Official may require a key box tamper switch connected to the building's fire alarm system.
- (d) Security padlocks. When a property is protected by a locked fence or gate and where immediate access to the property is necessary for lifesaving or firefighting purposes, the Fire Subcode/Fire Official may require a security padlock to be installed at a location approved by the Borough of Atlantic Highlands Fire Subcode/Fire Official. The padlock shall be UL type and size approved by the Fire Subcode/Fire Official.
- (e) Security caps. When a building is protected by an automatic sprinkler system or standpipe system and the Fire Department connection is exposed to undue vandalism, the Fire Subcode/Fire Official may require that a Fire Department Connection Security Cap(s) be installed. The Fire Department Connection Security Cap(s) shall be a type approved by the Fire Subcode/Fire Official.
- (f) Nonapplicability to certain dwellings. The term "building" used herein means any building or structure located in the Borough of Atlantic Highlands, whether privately or publicly owned, including, without limitation, any building owned by the Borough of Atlantic Highlands, the Atlantic Highlands Board of Education, the Atlantic Highlands Housing Authority or any other public, quasi-public, or private entity or person; provided, however, that this chapter shall not apply to owner occupied one- and two-family dwellings.
- (g) Rapid response key boxes. The rapid key boxes shall contain the following:
 - [1] Keys to locked points of egress, whether in interior or exterior of such buildings;
 - [2] Keys to the locked mechanical rooms;
 - [3] Keys to the locked elevator rooms;
 - [4] Keys to the elevator controls;
 - [5] Keys to any fence or secured areas;
 - [6] Keys to any other areas that may be required by the Fire Subcode/Fire Official.
 - [7] A card containing the emergency contact people and phone numbers for such building. In addition, floor plan of the rooms within the building may be required.
- (h) Time for compliance. All existing buildings shall comply with this article six months from

its effective date. All newly constructed buildings, not yet occupied or buildings currently under construction and all buildings or businesses applying for a certificate of occupancy, shall comply immediately.

B. Fire hydrants. [Amended 11-6-1991 by Ord. No. 10-91]

- (1) Blocking of fire hydrants or Fire Department connections. It shall be unlawful to obscure from view, damage, deface, obstruct, or restrict access to, any fire hydrant or fire department connection used for the pressurization of fire department suppression systems, including fire hydrants, and fire department standpipe connections that are located on public or private streets, access lanes or on private property. Any motor vehicle blocking a fire hydrant or fire department connection, as described in this section, shall be subject to being towed to remove the obstruction, at the owners expense. The penalty for each violation of this section shall be a minimum fine of \$50 and a maximum fine of \$100 as may be determined by the authority having jurisdiction.¹⁰⁹
- (2) Size; type; installation. The size, type and installation of all fire hydrants replaced or installed from and after the effective date of this article shall conform to the American Water Works Association Standards for Dry Barrel Fire Hydrants (AWWA C-502) and shall be administered by the Atlantic Highlands Water Department. All fire hydrants shall have at least three outlets; one appropriately sized and threaded fire department steamer connection and the remaining pair to be 2 1/2 inch National Standard Thread fire hose connections. A shutoff valve shall be provided between each hydrant and the street main.
- (3) Marking of fire hydrants. Fire hydrants are to be classified and color coded as prescribed by the National Fire Protection Association Standard 1231.

C. Sprinkler systems. Sprinkler systems shall be installed in structures as provided by the UFC and/or in compliance with the codes and standards of the National Fire Protection Association, with the following exceptions.

- (1) Independent lines. All fire protection water service lines shall be independent of those intended to service the potable water system of any structure. **[Amended 11-6-1991 by Ord. No. 10-91]**
- (2) No cross-connections. There shall be no cross-connections permitted between fire and potable water systems. **[Amended 11-6-1991 by Ord. No. 10-91]**

D. False automatic fire alarm activations. The penalties shall be as follows:¹¹⁰

- (1) First offense within one year (12 consecutive months): written violation.
- (2) Second offense within same year (12 consecutive months): \$100.
- (3) Third offense within same year (12 consecutive months): \$500.

§ 178-7. Code of ethics.

- A. Establishment.** There is hereby adopted, to insure a defined level of personal accountability, a standard of conduct to be henceforth referenced as the Code of Ethics of the Division of Fire Prevention, of the Atlantic Highlands Fire Department.

109.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

110.Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- B. Applicability. The Code of Ethics shall be applicable to the following members of the Division of Fire Prevention:
- (1) Fire Marshal.
 - (2) Deputy Fire Marshal.
 - (3) Other. Other appointees of the Fire Marshal. **[Amended 11-6-1991 by Ord. No. 10-91]**
- C. The Code of Ethics.
- (1) I will, as a fire enforcement officer, consider myself as a member of an important and honorable profession.
 - (2) I will conduct both my personal and official life so as to inspire the confidence of the public.
 - (3) I will not use my profession and my position of trust for personal advantage or profit.
 - (4) I will regard my fellow officers with the same standards as I hold for myself. I will never betray a confidence nor otherwise jeopardize a just exercise of their duties.
 - (5) I will regard it my duty to know my work thoroughly. It is my further duty to avail myself of every opportunity to learn more about my profession.
 - (6) I will avoid alliances with those whose goals are inconsistent with an honest and unbiased application of the established regulatory codes. I will make no claim to professional qualifications which I do not possess.
 - (7) I will share all publicity equally with my fellow officers, whether such publicity is favorable or unfavorable.
 - (8) I will be loyal to my superiors, to my subordinates and to the organization I represent.
 - (9) I will bear in mind always that I seek compliance and not punitive enforcement and that I am a truth-seeker, not a case-maker; that it is more important to protect the innocent than to convict the guilty.¹¹¹

§ 178-8. Division of Fire Prevention, Squad Company One; establishment and organization.

- A. Establishment. There is hereby created by the governing body of the Borough of Atlantic Highlands, for the purpose of providing for a more efficient degree of fire protection and prevention, a fourth fire company within the municipality. This new company shall be added to the organizational table of the Atlantic Highlands Fire Department.
- B. Authority. This new company shall be placed under the direct administrative and tactical control of the Fire Marshal who, during times of fire suppression emergency, shall cede control of all equipment and personnel to the Chief of the Atlantic Highlands Fire Department.
- C. Nomenclature. For the purpose of identification, this new company shall be designated as the Division of Fire Prevention, Squad Company One, and shall be referenced for the remainder of this article as "the Company."

111. Editor's Note: Former Subsection 7.4, Removal, which immediately followed this subsection, was repealed 11-6-1991 by Ord. No. 10-91.

- D. Company officers. The Fire Marshal shall appoint such company officers as are necessary to insure efficient operation of the Company. All positions shall be graded in a paramilitary style (Private to Lieutenant) with the highest-ranking officer holding the position of lieutenant. All members of the company shall hold the basic title of Fire Security Officer.

§ 178-9. Duties.

- A. Duties. The following shall define the duties of a Fire Security Officer.

- (1) Control. Provide control of non-fire fighter personnel upon the fireground.
- (2) Traffic. Keep the fireground free from non-essential vehicular traffic and assist the local law enforcement agency in the safe and orderly passage of such through or around the scene of a fire or other emergency.
- (3) Investigation. Assist the Division Fire Marshals and the Chief of the Fire Department in the investigation of fires and provide security forces for the protection of structures, vehicles, properties, or other items until the conclusion of such primary investigations.
- (4) Education. Assist the Fire Marshals in the presentation of public fire prevention and hazardous materials education programs.
- (5) Miscellaneous. Perform other public fire and safety duties as assigned by the Fire Marshal or the Chief of the Atlantic Highlands Fire Department.
- (6) Fire police statutes.¹¹²
 - (a) Any duly organized volunteer fire company may provide for the appointment of certain of its members to perform certain police duties at fires and fire drills, for a term of office not exceeding five years from the date of the appointment. The appointed members shall, before entering upon their duties, be qualified by:
 - [1] Successfully completing a basic fire police training course formulated or approved by the Division of Fire Safety.
 - [2] Taking and subscribing an oath that they will justly, impartially and faithfully discharge their duties according to the best of their ability and understanding. The oath shall be administered by the municipal clerk and subscribed to in duplicate. The original copy of the oath shall be filed with the municipal clerk and the copy thereof filed with the secretary of the fire company making the appointment.
 - (b) After appointment, a qualified member shall be eligible as a fire police officer and shall have full power and authority to act as a fire police officer anywhere in the county in which he is appointed or in any other county in which he is called upon to act.
 - (c) It shall be the duty of a member of the fire police to perform his duties under the supervision of the fire officer in charge of the fire or fire drill, until the arrival of a duly authorized police officer, who shall assume responsibility for the supervision of the performance of traffic duties, preservation of evidence and all other law enforcement duties. Nothing in this subsection shall diminish the powers of the fire chief or other superior officer of any volunteer fire company in the exercise of his duties pursuant to

112.Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Section 1 of P.L. 1981, c.435 (N.J.S.A. 40A:14-54.1).

(d) Specific duties.

[1] The duties of said fire police subject to the supervision aforesaid shall be to:

[a] Protect property and contents.

[b] Establish and maintain fire lines.

[c] Perform such traffic duties as necessary, from the fire station to and at the vicinity of the fire, fire drill or other emergency call, until the arrival of a duly authorized police officer or at any public event where fire police services may be requested to protect the public, subject to the approval of and supervision by the chief law enforcement officer of the municipality in which the public event takes place, or the Superintendent of the State Police if the municipality does not have a police department.

[d] In the absence of investigating authorities, fire police shall investigate all causes of fires and preserve all evidence pertaining to questionable fires and turn evidence over to proper investigating authorities.

[e] Wear the authorized fire police badge on the left breast of the outermost garment while on duty.

[2] Provided, however, nothing herein contained shall give the fire police or any of them the right to supersede a duly authorized police officer.

(e) If any person shall unreasonably refuse to obey the orders of the fire police, a fire police officer may arrest him and keep him under arrest until the fire is extinguished or the drill completed. If the offender is found guilty by a municipal court or Superior Court, he shall be sentenced to pay a fine not exceeding \$200 and costs.

§ 178-10. Membership.

A. Regular membership: Membership in the Company shall be limited to 25 regular members and 10 auxiliary members which shall include the Fire Marshal and the Deputy Fire Marshal(s). **[Amended 5-13-2021 by Ord. No. 09-2021]**

B. Internal Board of Review. All applications for membership shall be submitted on the approved form to the Fire Marshal. An Internal Board of Review consisting of the Fire Marshal, a Deputy Fire Marshal, and a member of the Company shall be convened to rule on the acceptability of the application. Due to the sensitive and enforcement nature of the duties of its membership, the Division retains the right to reject any and all applications for good cause.

C. Membership, general. Membership shall be open to any resident of the municipality regardless of race, creed, sex or national origin. Applicants for membership shall satisfactorily meet the basic physical requirements needed to perform the duties of the Company. **[Amended 11-6-1991 by Ord. No. 10-91¹¹³]**

D. Appointment approval. All final appointments are made and subject to approval of the Mayor and

113. Editor's Note: This ordinance also repealed Subsection 10.4, Membership, Special and Subsection 10.5, Associate and Life membership, which immediately followed this subsection.

Council of the Borough of Atlantic Highlands.

- E. Dual membership. Members of any other segment of the Atlantic Highlands Fire Department shall not be permitted regular membership in the Company who do not meet the following criteria: **[Amended 5-13-2021 by Ord. No. 09-2021]**
- (1) Fire Marshal;
 - (2) Deputy Fire Marshal(s);
 - (3) Life member. Life member of another Company of the Atlantic Highlands Fire Department.; and
 - (4) Transfer of a regular/auxiliary Company member of the Atlantic Highlands Fire Department.
- F. Status and certification. The Fire Marshal shall be a member of the Atlantic Highlands Fire Department and hold valid State of New Jersey certification pursuant to the UFC. **[Added 5-13-2021 by Ord. No. 09-2021]**

§ 178-11. Funding and allotments.

- A. Funding. The Company shall derive its operating funds in the following manner:
- (1) Borough. The Borough;
 - (2) Division. The Division of Fire Prevention;
 - (3) Company. The Company at Large.
- B. Allotments. Members of the Company shall be afforded a yearly allotment, paid by the Borough, calculated at a rate of 1/2 of the established rate for other members of the Fire Department. The Fire Marshal and the Deputy Fire Marshal(s) shall not be entitled to said allotment.

§ 178-12. Squad company, internal government.

- A. Government. The membership of the Company shall develop, adopt and administer a parliamentary form of internal government consistent with the ordinance and the established rules and regulations of the Atlantic Highlands Fire Department. This internal government shall assume the form of a Constitution and By-Laws which shall prescribe, but not be limited to, rules for Company officers, elections, administration, finance, punitive actions and internal membership requirements. **[Amended 11-6-1991 by Ord. No. 10-91]**
- B. Marshal(s) restricted. The Fire Marshal and the Deputy Fire Marshal(s) shall not be eligible to hold elected office within the Company.

§ 178-13. Authority.

- A. Authority at fires and other emergencies. The Chief fire officer or duly authorized representative, as may be in charge at the scene of a fire or other emergency involving the protection of life and/or property, is empowered to direct such operations as may be necessary to extinguish or control any suspected or reported fires, gas leaks, or other hazardous conditions or situations or of taking any other action necessary in the reasonable performance of their duties. The fire officer may prohibit any person, vehicle or other object from approaching the scene, and may remove or cause to be removed

from the scene any person, vehicle or object from the hazardous area. All persons ordered to leave a hazardous area shall do so immediately and shall not re-enter the area until authorized to do so by the Fire Official.

- B. Interference with Fire Department operations. It shall be unlawful to interfere with, attempt to interfere with, conspire to interfere with, obstruct or restrict the mobility of, or block the path of travel of any fire department emergency vehicle in any way, or to interfere with, attempt to interfere with, conspire to interfere with, obstruct or hamper any Fire Department operation.
- C. Compliance with orders. A person shall not willfully fail to comply with any lawful order or direction of a fire official or to interfere with the compliance attempts of other individuals.
- D. Penalties. Any person held to be in violation of § 178-13 shall be subject to a fine, collectible in the Atlantic Highlands Municipal Court, of not less than \$100 nor more than \$500 for each occurrence.

§ 178-14. Fire Department emergency equipment.

- A. Definition of authorized emergency vehicles. Authorized emergency vehicles shall be restricted to those which are defined or authorized by the laws of the State of New Jersey.
- B. Operation of vehicles on approach of authorized emergency vehicles. Upon the approach of any authorized emergency vehicles, giving audible and visual signal, the operator of every other vehicle shall immediately drive same to a position as near as possible and parallel to the right-hand edge or curb of the street or roadway, clear any intersection, and remain in such position until the authorized emergency vehicle or vehicles shall have passed, unless otherwise directed by the Fire Security officers, the Fire Official or a law enforcement officer.
- C. Vehicles following fire apparatus. It shall be unlawful for the operator of any vehicle, other than one on official business, to follow closer than the distance established by the laws of the State of New Jersey from any fire apparatus traveling in response to a fire alarm or other emergency, or to drive any vehicle within the block or immediate area where fire apparatus has stopped in answer to such emergencies. **[Amended 11-6-1991 by Ord. No. 10-91]**
- D. Unlawful boarding or tampering with Fire Department emergency vehicles or equipment. A person shall not, without proper authorization from the Fire Official in charge of said fire apparatus, cling to, attach himself/herself to, climb upon or into, board or swing upon, any fire department emergency vehicle, whether the same is in motion or at rests, nor sound the siren, horn, bell or tamper with, or attempt to manipulate or tamper with any levers, valves, switches, starting devices, brakes, pumps, or any other equipment or protective clothing on, or part of, any fire department emergency vehicle.
- E. Vehicles crossing fire hose. A vehicle shall not be driven or propelled over any unprotected fire hose of the Fire Department when laid down on any street, alleyway, private drive or any other vehicular roadway without the consent of the fire officer in command of said operation.
- F. Penalties. Any person found to be in violation of § 178-14 shall be subject to a fine, to be collected by the Municipal Court, of not less than \$25 nor more than \$100 for each occurrence.

§ 178-15. Fire service appliances.

- A. Hydrant use approval. A person shall not use or operate any fire hydrant intended for the use of the Fire Department for fire-suppression purposes unless such persons secure a permit for such use from the Division of Fire Prevention and the Water Department of the Borough of Atlantic Highlands. This

section shall not apply to the use of such hydrants by a person employed by, and authorized to make use by, the Water Department of the Borough of Atlantic Highlands.

- B. Public water supply. The Fire Official shall recommend to the Borough Administrator the location or relocation of new or existing fire hydrants and the placement or replacement of inadequate water mains located upon public property and deemed necessary to provide an adequate fire flow and distribution pattern. A fire hydrant shall not be placed into or removed from service without prior notice to and approval of the Chief Fire Official.
- C. Yard systems. (Reserved)
- D. Sale of defective fire extinguisher and appliances. A person shall not sell, trade, loan, or give any form, type or kind of fire extinguisher or fire appliance which is not in proper working order, or the contents of which do not meet the requirements of the Fire Official. The requirements of this section shall not apply to the sale, trade, or exchange of obsolete or damaged equipment for junk or display when said units or appliances are permanently disfigured or marked with a permanent sign identifying the unit as junk or otherwise rendered inoperative or unrepairable.¹¹⁴

§ 178-16. Authority.

- A. Authority. This article is established by the Mayor and Council of the Borough of Atlantic Highlands and is intended to locally enforce or govern the use of such materials or substances that, if released by accident or intent, may cause irreparable harm to the civilian population or the environment of the Borough of Atlantic Highlands.
- B. Authority having jurisdiction. It shall be the responsibility of the Fire Marshal or his duly authorized representative to insure complete compliance with all federal and state regulations and guidelines by persons, businesses, companies, or organizations who use, store, transport, or manufacture any hazardous material within the territorial limits of the Borough of Atlantic Highlands.

§ 178-17. References.

- A. References. The laws and publications used in the development of this Code are pursuant to:
 - (1) The Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 665.126);
 - (2) The Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657);
 - (3) The Administrative Procedure Act (5 U.S.C. 553);
 - (4) The Hazardous Waste Operations and Emergency Response Act (29 CFR 1910.120);
 - (5) The Emergency Planning and Community Right-To-Know Act of 1986 (SARA Title-III);
 - (6) The State of New Jersey Civil Defense/Disaster Control Act (N.J.S.A. App. A:9-33 et seq.);
 - (7) The State of New Jersey Hazardous Discharge Notification Act (N.J.S.A. 13:1K-16 and 17).
- B. Local restrictions. Apart from the referenced documents listed Subsection B, nothing shall preclude the Borough of Atlantic Highlands or any of its boards, authorities or commissions from requiring additional regulation of the use, storage, transport, or manufacture of hazardous materials within the

114. Editor's Note: Former Section 16, Street Obstructions and restrictions, which immediately followed this subsection, was repealed 11-6-1991 by Ord. No. 10-91.

Borough of Atlantic Highlands.

§ 178-18. Training of personnel.

- A. Firefighter training. The Fire Chief shall insure that all persons under his command receive the established level of training required for such emergency response personnel, namely, Level I, Awareness.¹¹⁵
- B. Additional training. The Fire Marshal and the staff officers of the Fire Department shall seek to maintain a level of technical competence consistent with any change or update of applicable regulatory measures.
- C. Technical reference materials. The Division of Fire Prevention shall maintain such technical reference material, including manuals, documents or periodicals, that may be required to ensure compliance with federal or state regulations. Such reference materials shall be of a type as to be made readily available to any authorized agent of the federal, state, or local government for use during a hazardous materials release.

§ 178-19. Compliance.

- A. Approval. Neither the Mayor and Council of the Borough of Atlantic Highlands nor any of its agents, boards, commissions, or authorities shall grant approval for the establishment of any private use, business use, storage of, manufacture of, or transport of any hazardous materials within the territorial limits of the Borough of Atlantic Highlands without the approval of the Office of the Fire Marshal.
- B. Establishment of hazardous materials uses by business or industry. Any person, business, or corporation making application for the use, storage, manufacture, or transport of any hazardous material before any agent, board, commission or authority of the municipality shall provide such governmental agents with all the necessary federal, state, or municipal approval documentation. The applicant shall also prove a clear and unrestrictive intent to comply with any/all such regulatory measures prior to and after approval and establishment of the use of hazardous materials within the municipality.
- C. License requirements. Where required by federal or state statute, all operators shall possess a valid license to conduct any process involving the use or manufacture of a listed hazardous substance.
- D. Retrofit. Any person, business, corporation, or other organization granted permission by the Borough of Atlantic Highlands to establish a place of business using or engaging in the manufacture of a hazardous substance shall fully comply with all federal, state, or municipal laws and regulations as they are updated. In no instance shall economics be a basis for noncompliance.
- E. Exemptions. Any person, business, corporation, or other recognized agent who is regulated by the Federal or State Department of Transportation is exempt from compliance with this article as are the military forces of the United States government. The Borough of Atlantic Highlands is held to be nonexempt.

§ 178-20. Inspections.

- A. Right of entry. After approval and establishment of an operation engaged in the use, storage

115. Editor's Note: Former Subsection 19.2, Advanced training, which immediately followed this Subsection, was repealed 11-6-1991 by Ord. No. 10-91.

manufacture, or transport of hazardous substances, the Borough of Atlantic Highlands retains the right to enter upon such property or premises to conduct periodic fire or safety inspections. These inspections shall be conducted by the Fire Marshal or his designated representatives during times of normal operations.

- B. Frequency of inspections. The Fire Marshal or his authorized representatives shall inspect all properties or businesses engaged in the use, storage, manufacture, or transport of a hazardous substance at least biannually but not in excess of a quarterly basis.
- C. Inspection fees. All fees or permits, as set by NJDCA, Division of Fire Safety/Fire Prevention, at time of application shall prevail. Any operation or business engaged in the use, storage, manufacture, or transport of any hazardous material or substance and not regulated under the New Jersey Uniform Fire Safety Act (N.J.A.C. 5:18 et seq.) shall be subject to local registration and pay an annual inspection fee as provided in Chapter 168, Article II. **[Amended 2-23-2011 by Ord. No. 03-2011; 5-13-2021 by Ord. No. 09-2021]**

§ 178-21. Violations and penalties.

- A. Fines. Any person, business, corporation or other organization found to be in violation of § 178-20 of this article shall be assessed a fine of \$100 for the first offense, \$500 for the second offense, and \$1,000 for the third offense, per day for as long as the violation exists.^{116,117}
- B. Other assessments. Any person, business, corporation, or other organization whose operations or actions require mitigation or remedial efforts to be taken by the Borough of Atlantic Highlands to abate any release of a hazardous material or substance shall be held fully responsible for the costs of such mitigation or remedial action.

§ 178-22. Documentation.

- A. Repealer. All ordinances or parts thereof that are inconsistent with the provisions of this article are hereby repealed as to such inconsistency. Specifically, Ordinance 895, Chapter 53 of the Code of the Borough of Atlantic Highlands, is repealed in its entirety.
- B. Severability. In the event that any section of the within article is declared to be illegal, unconstitutional, or otherwise unenforceable, then the balance of this article shall not be deemed void but shall remain in full force and effect.

116.Editor's Note: Former Subsection 22.1, Scope, which immediately preceded this subsection, was repealed 11-6-1991 by Ord. No. 10-91.

117.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE II
Uniform Fire Code
[Adopted 1-26-2005 by Ord. No. 3-2005]

§ 178-23. Local enforcement.

Pursuant to Section 11 of the Uniform Fire Safety Act (P.L. 1983 c. 383), the New Jersey Uniform Fire Code (N.J.A.C. 5:70-1 et seq.) shall be locally enforced in the Borough of Atlantic Highlands.

§ 178-24. Agency designation.

The local enforcing agency shall be the Atlantic Highlands Fire Department through its Division of Fire Prevention, which is hereby created therein. The Division of Fire Prevention shall hereinafter be known as the local enforcing agency.

§ 178-25. Duties.

- A. The local enforcing agency shall enforce the Uniform Fire Code in all buildings, structures, and premises within the established boundaries of the of the Borough of Atlantic Highlands, other than one- and two-unit owner-occupied dwellings used exclusively for dwelling purposes and buildings, structures, and premises owned or operated by the municipality, local authority, federal government, interstate agencies or the state.
- B. The local enforcing agency shall faithfully comply with all the pertinent requirements of the Uniform Fire Safety Act and the Uniform Fire Code.

§ 178-26. Organization.¹¹⁸

- A. The Division of Fire Prevention established by § 178-24 of this article shall be under the direct supervision and control of a Fire Marshal who shall report to the Chief of the Fire Department.
- B. The Division of Fire Prevention shall have at least one paid Fire Marshal. Salary for the Fire Marshal and the Deputy Fire Marshals of the Division of Fire Prevention shall be established in the annual Salary Ordinance of the Borough.¹¹⁹

§ 178-27. Appointments, qualifications, term of office, removal.

- A. Appointment and qualifications of the Fire Official. The Fire Official shall be certified by the state and appointed by the governing body, upon recommendation of the Fire Chief.
- B. Appointment and qualifications of inspectors and other employees.
 - (1) Deputy Fire Marshals, the Deputy Fire Marshals or other employees, as may be necessary in the Division of Fire Prevention, shall be appointed by the governing body of the Borough, for a term of one year, upon recommendation of the Fire Marshal. The Deputy Fire Marshals shall also be designated as Fire Inspectors pursuant to the "UFC."
 - (2) The governing body, upon recommendation of the Fire Official, shall appoint inspectors, for a term of one year, and other employees of the enforcing agency. All life hazard use inspectors

¹¹⁸.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

¹¹⁹.Editor's Note: The currently effective Salary Ordinance is on file in the office of the Municipal Clerk.

shall be certified by the state.

- C. Appointment of legal counsel. The governing body shall specifically appoint legal counsel to assist the agency in enforcing the Uniform Fire Code.
- D. Term of office. The Fire Official shall serve for a term of a minimum of two years. Any vacancy shall be filled for the unexpired term.
- E. Removal from office. The Fire Official, inspectors and other employees of the agency shall be subject to removal by the governing body for just cause. Before removal from office, all persons shall be afforded an opportunity to be heard by the governing body or a hearing officer designated by the same.

§ 178-28. Life hazard uses.¹²⁰

The Division of Fire Prevention established by § 178-24 of this article shall carry out the periodic inspections of life hazard uses required by the Uniform Fire Code on behalf of the Commissioner of the New Jersey Department of Community Affairs.

§ 178-29. Non-life hazard uses.¹²¹

A. Fees.

- (1) In addition to the registrations required by the Uniform Fire Code, the following non-life hazard uses shall register with the Division of Fire Prevention. These uses shall be inspected once per year and pay an annual fee.
- (2) Uses not classified above that are subject to the Uniform Fire Code will be classified as business uses.
- (3) Uses required to register with the state as life hazard uses shall not be required to register under this section.
- (4) In the discretion of the Fire Official, vacant buildings will be charged and inspected according to the previous use of the building.
- (5) All residential uses except R-A uses shall be inspected in the common areas only.

- B. The application fees for the permits listed in N.J.A.C. 5:70-2.7(b) shall be as provided by state regulation; see Chapter 168, Article II.
- C. The cost for the issuance of a certificate of fire code status shall be as provided in Chapter 168, Article II.
- D. The application fee for a certificate of smoke detector and carbon monoxide alarm compliance (CSDCMAC), as required by N.J.A.C. 5:70-2.3, shall be based upon the amount of time remaining before the change of occupant is expected, as provided in Chapter 168, Article II.

§ 178-30. Board of Appeals.

Pursuant to Sections 15 and 17 of the Uniform Fire Safety Act,¹²² any person aggrieved by any action of

¹²⁰.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

¹²¹.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

the local enforcing agency shall have the right to appeal to the local construction board of appeals. (If no such body exists, appeals shall be made to the county construction board of appeals.)

§ 178-31. Enforcement, violations and penalties.

Enforcement, violations, and penalties shall be managed in conformity with the Uniform Fire Safety Act, the Uniform Fire Code and all other laws of the State of New Jersey.

ATLANTIC HIGHLANDS CODE

Chapter 183

FLOOD DAMAGE PREVENTION

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 6-9-2022 by Ord. No. 07-2022.¹²³¹²⁴ Amendments noted where applicable.]

123.Editor's Note: This ordinance provided an effective date of April 1, 2023.

124.Editor's Note: This ordinance also repealed former Ch. 183, Flood Damage Prevention, adopted 7-29-2009 by Ord. No. 13-2009, as amended.

ARTICLE I
Scope and Administration

§ 183-1. Title.

These regulations, in combination with the flood provisions of the Uniform Construction Code (UCC) N.J.A.C. 5:23 (hereinafter "Uniform Construction Code," consisting of the Building Code, Residential Code, Rehabilitation Subcode, and related codes, and the New Jersey Flood Hazard Area Control Act (hereinafter "FHACA"), N.J.A.C. 7:13, shall be known as the Floodplain Management Regulations of the Borough of Atlantic Highlands (hereinafter "these regulations").

§ 183-2. Scope.

These regulations, in combination with the flood provisions of the Uniform Construction Code and FHACA, shall apply to all proposed development in flood hazard areas established in Article II of these regulations.

§ 183-3. Purposes and objectives.

The purposes and objectives of these regulations are to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific flood hazard areas through the establishment of comprehensive regulations for management of flood hazard areas, designed to:

- A. Protect human life and health.
- B. Prevent unnecessary disruption of commerce, access, and public service during times of flooding.
- C. Manage the alteration of natural floodplains, stream channels and shorelines;
- D. Manage filling, grading, dredging and other development which may increase flood damage or erosion potential.
- E. Prevent or regulate the construction of flood barriers which will divert floodwater or increase flood hazards.
- F. Contribute to improved construction techniques in the floodplain.
- G. Minimize damage to public and private facilities and utilities.
- H. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas.
- I. Minimize the need for rescue and relief efforts associated with flooding.
- J. Ensure that property owners, occupants, and potential owners are aware of property located in flood hazard areas.
- K. Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events.
- L. Meet the requirements of the National Flood Insurance Program for community participation set forth in Title 44 Code of Federal Regulations, Section 59.22.

§ 183-4. Coordination with building codes.

Pursuant to the requirement established in N.J.A.C. 5:23, the Uniform Construction Code, that the Borough of Atlantic Highlands administer and enforce the state building codes, the Mayor and Council of the Borough of Atlantic Highlands does hereby acknowledge that the Uniform Construction Code contains certain provisions that apply to the design and construction of buildings and structures in flood hazard areas. Therefore, these regulations are intended to be administered and enforced in conjunction with the Uniform Construction Code.

§ 183-5. Ordinary building maintenance and minor work.

Improvements defined as "ordinary building maintenance and minor work projects" by the Uniform Construction Code including nonstructural replacement-in-kind of windows, doors, cabinets, plumbing fixtures, decks, walls, partitions, new flooring materials, roofing, etc., shall be evaluated by the Floodplain Administrator through the floodplain development permit to ensure compliance with the Substantial Damage and Substantial Improvement § 183-26 of this chapter.

§ 183-6. Warning.

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. Enforcement of these regulations does not imply that land outside the special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage.

§ 183-7. Other laws.

The provisions of these regulations shall not be deemed to nullify any provisions of local, state, or federal law.

§ 183-8. Violations and penalties for noncompliance.

- A. No structure or land shall hereafter be constructed, relocated to, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a violation under N.J.S.A. 40:49-5. Any person who violates this chapter or fails to comply with any of its requirements shall be subject to one or more of the following: a fine of not more than \$1,250, imprisonment for a term not exceeding 90 days or a period of community service not exceeding 90 days. Each day in which a violation of an ordinance exists shall be considered to be a separate and distinct violation subject to the imposition of a separate penalty for each day of the violation as the Court may determine except that the owner will be afforded the opportunity to cure or abate the condition during a thirty-day period and shall be afforded the opportunity for a hearing before the court for an independent determination concerning the violation. Subsequent to the expiration of the thirty-day period, a fine greater than \$1,250 may be imposed if the court has not determined otherwise, or if upon reinspection of the property, it is determined that the abatement has not been substantially completed. Any person who is convicted of violating an ordinance within one year of the date of a previous violation of the same ordinance and who was fined for the previous violation, shall be sentenced by a court to an additional fine as a repeat offender. The additional fine imposed by the court upon a person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of the ordinance, but shall be calculated separately from the fine

imposed for the violation of the ordinance.

- B. Solid waste disposal in a flood hazard area. Any person who has unlawfully disposed of solid waste in a floodway or floodplain who fails to comply with this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$2,500 or up to a maximum penalty by a fine not exceeding \$10,000 under N.J.S.A. 40:49-5.

§ 183-9. Abrogation and greater restrictions.

These regulations supersede any ordinance in effect in flood hazard areas. However, these regulations are not intended to repeal or abrogate any existing ordinances, including land development regulations, subdivision regulations, zoning ordinances, stormwater management regulations, or building codes. In the event of a conflict between these regulations and any other ordinance, code, or regulation, the more restrictive shall govern.

ARTICLE II Applicability

§ 183-10. General.

These regulations, in conjunction with the Uniform Construction Code, provide minimum requirements for development located in flood hazard areas, including the subdivision of land and other developments; site improvements and installation of utilities; placement and replacement of manufactured homes; placement of recreational vehicles; new construction and alterations, repair, reconstruction, rehabilitation or additions of existing buildings and structures; substantial improvement of existing buildings and structures, including repair of substantial damage; installation of tanks; temporary structures and temporary or permanent storage; utility and miscellaneous Group U buildings and structures; and certain building work exempt from permit under the Uniform Construction Code; and other buildings and development activities.

§ 183-11. Establishment of flood hazard areas.

The Borough of Atlantic Highlands was accepted for participation in the National Flood Insurance Program on August 3, 1981. The National Flood Insurance Program (NFIP) floodplain management regulations encourage that all federal, state, and local regulations that are more stringent than the minimum NFIP standards take precedence in permitting decisions. The FHACA requires that the effective Flood Insurance Rate Map, most recent preliminary FEMA mapping and flood studies, and Department delineations be compared to determine the most restrictive mapping. The FHACA also regulates unstudied flood hazard areas in watersheds measuring 50 acres or greater in size and most riparian zones in New Jersey. Because of these higher standards, the regulated flood hazard area in New Jersey may be more expansive and more restrictive than the FEMA special flood hazard area. Maps and studies that establish flood hazard areas are on file at the Borough of Atlantic Highlands, 100 First Avenue, Atlantic Highlands, New Jersey, 07716. The following sources identify flood hazard areas in this jurisdiction and must be considered when determining the best available flood hazard data area:

- A. Effective flood insurance study. Special flood hazard areas (SFHAs) identified by the Federal Emergency Management Agency in a scientific and engineering report entitled the "Flood Insurance Study, Monmouth County, New Jersey (All Jurisdictions)" dated September 25, 2009, and revised on June 20, 2018, and June 15, 2022, and the accompanying Flood Insurance Rate Maps (FIRM) identified in Table 102.2(1) whose effective dates are September 25, 2009, June 20, 2018, and June 15, 2022, are hereby adopted by reference.

Table 102.2(1)					
Map Panel #	Effective Date	Revision Letter	Map Panel #	Effective Date	Revision Letter
34025C0066	9-25-2009	F			
34025C0067	6-20-2018	G			
34025C0068	6-15-2022	G			
34025C0069	6-15-2022	G			

- B. Federal best available information. The Borough of Atlantic Highlands shall utilize federal flood information as listed in the table below that provides more detailed hazard information, higher flood elevations, larger flood hazard areas, and results in more restrictive regulations. This information may

include, but is not limited to, preliminary flood elevation guidance from FEMA (such as Advisory flood hazard area Maps, work maps or Preliminary FIS and FIRM). Additional federal best available studies issued after the date of this chapter must also be considered. These studies are listed on FEMA's Map Service Center. This information shall be used for floodplain regulation purposes only.

Table 102.2(2)			
Map Panel #	Preliminary Date	Map Panel #	Preliminary Date
34025C0066G	1/30/2015		
34025C0067H	1/30/2015		
34025C0068H	1/31/2014		
34025C0069H	1/31/2014		

- C. Other best available data. The Borough of Atlantic Highlands shall utilize high water elevations from flood events, groundwater flooding areas, studies by federal or state agencies, or other information deemed appropriate by the Borough of Atlantic Highlands. Other "best available information" may not be used which results in less restrictive flood elevations, design standards, or smaller flood hazard areas than the sources described in § 183-11A and B, above. This information shall be used for floodplain regulation purposes only.
- D. State-regulated flood hazard areas. For state-regulated waters, the NJ Department of Environmental Protection (NJDEP) identifies the flood hazard area as the land, and the space above that land, which lies below the "Flood Hazard Area Control Act design flood elevation", as defined in Article II, and as described in the New Jersey Flood Hazard Area Control Act at N.J.A.C. 7:13. A FHACA flood hazard area exists along every regulated water that has a drainage area of 50 acres or greater. Such area may extend beyond the boundaries of the special flood hazard areas (SFHAs) as identified by FEMA. The following is a list of New Jersey State studied waters in this community under the FHACA, and their respective map identification numbers.

Table 102.2(3) List of State Studied Waters		
Name of Studied Water	File Name	Map Number
Many Mind Ck, Wagner Ck	V0000080	Sheet 3
Sandy Hook Bay	V0000081	Sheet 4
Many Mind Creek	V0000082p	Sheet 5
Wagner Creek	V0000083p	Sheet 5

§ 183-12. Establishing the local design flood elevation (LDFE).

The local design flood elevation (LDFE) is established in the flood hazard areas determined in § 183-11, above, using the best available flood hazard data sources, and the Flood Hazard Area Control Act minimum statewide elevation requirements for lowest floors in A, Coastal A, and V zones, ASCE 24 requirements for critical facilities as specified by the building code, plus additional freeboard as specified by this chapter. At a minimum, the local design flood elevation shall be as follows:

- A. For a delineated watercourse, the elevation associated with the best available flood hazard data area

determined in § 183-11, above plus one foot, or as described by N.J.A.C. 7:13 of freeboard; or

- B. For any undelineated watercourse (where mapping or studies described in § 183-11A and B above are not available) that has a contributory drainage area of 50 acres or more, the applicants must provide one of the following to determine the local design flood elevation:
 - (1) A copy of an unexpired NJDEP flood hazard area Verification plus one foot of freeboard and any additional freeboard as required by ASCE 24; or
 - (2) A determination of the flood hazard area design flood elevation using Method 5 or Method 6 (as described in N.J.A.C. 7:13) plus one foot of freeboard and any additional freeboard as required by ASCE 24. Any determination using these methods must be sealed and submitted according to § 183-35A(3).
- C. AO Zones. For Zone AO areas on the municipality's FIRM (or on preliminary flood elevation guidance from FEMA), the local design flood elevation is determined from the FIRM panel as the highest adjacent grade plus the depth number specified plus one foot of freeboard. If no depth number is specified, the local design flood elevation is three feet above the highest adjacent grade.
- D. Class IV critical facilities. For any proposed development of new and substantially improved Flood Design Class IV critical facilities, the local design flood elevation must be the higher of the 0.2% annual chance (500-year) flood elevation or the flood hazard area design flood elevation with an additional two feet of freeboard in accordance with ASCE 24.
- E. Class III critical facilities. For proposed development of new and substantially improved Flood Design Class III critical facilities in coastal high hazard areas, the local design flood elevation must be the higher of the 0.2% annual chance (500-year) flood elevation or the flood hazard area design flood elevation with an additional one foot of freeboard in accordance with ASCE 24.

ARTICLE III

Duties and Powers of the Floodplain Administrator**§ 183-13. Floodplain Administrator designation.**

The Construction Official is designated the Floodplain Administrator. The Floodplain Administrator shall have the authority to delegate performance of certain duties to other employees.

§ 183-14. General.

The Floodplain Administrator is authorized and directed to administer the provisions of these regulations. The Floodplain Administrator shall have the authority to render interpretations of these regulations consistent with the intent and purpose of these regulations and to establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be consistent with the intent and purpose of these regulations and the flood provisions of the building code and shall not have the effect of waiving specific requirements without the granting of a variance pursuant to Article VII of these regulations.

§ 183-15. Coordination.

The Floodplain Administrator shall coordinate with the Construction Official to administer and enforce the flood provisions of the Uniform Construction Code.

§ 183-16. Duties.

The duties of the Floodplain Administrator shall include, but are not limited to:

- A. Review all permit applications to determine whether proposed development is located in flood hazard areas established in Article II of these regulations.
- B. Require development in flood hazard areas to be reasonably safe from flooding and to be designed and constructed with methods, practices and materials that minimize flood damage.
- C. Interpret flood hazard area boundaries and provide available flood elevation and flood hazard information.
- D. Determine whether additional flood hazard data shall be obtained or developed.
- E. Review required certifications and documentation specified by these regulations and the building code to determine that such certifications and documentations are complete.
- F. Establish, in coordination with the Construction Official, written procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to § 183-26 of these regulations.
- G. Coordinate with the Construction Official and others to identify and investigate damaged buildings located in flood hazard areas and inform owners of the requirement to obtain permits for repairs.
- H. Review requests submitted to the Construction Official seeking approval to modify the strict application of the flood load and flood-resistant construction requirements of the Uniform Construction Code to determine whether such requests require consideration as a variance pursuant to Article VII of these regulations.

- I. Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps when the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within six months of such data becoming available.
- J. Require applicants who propose alteration of a watercourse to notify adjacent jurisdictions and the NJDEP Bureau of Flood Engineering, and to submit copies of such notifications to the Federal Emergency Management Agency (FEMA).
- K. Inspect development in accordance with Article VI of these regulations and inspect flood hazard areas to determine if development is undertaken without issuance of permits.
- L. Prepare comments and recommendations for consideration when applicants seek variances in accordance with Article VII of these regulations.
- M. Cite violations in accordance with Article VIII of these regulations.
- N. Notify the Federal Emergency Management Agency when the corporate boundaries of the Borough of Atlantic Highlands have been modified.
- O. Permit ordinary maintenance and minor work in the regulated areas discussed in § 183-11.

§ 183-17. Use of changed technical data.

The Floodplain Administrator and the applicant shall not use changed flood hazard area boundaries or base flood elevations for proposed buildings or developments unless the Floodplain Administrator or applicant has applied for a conditional letter of map revision (CLOMR) to the Flood Insurance Rate Map (FIRM) revision and has received the approval of the Federal Emergency Management Agency. A revision of the effective FIRM does not remove the related feature(s) on a flood hazard area delineation that has been promulgated by the NJDEP. A separate application must be made to the state pursuant to N.J.A.C. 7:13 for revision of a flood hazard design flood elevation, flood hazard area limit, floodway limit, and/or other related feature.

§ 183-18. Other permits.

It shall be the responsibility of the Floodplain Administrator to assure that approval of a proposed development shall not be given until proof that necessary permits have been granted by federal or state agencies having jurisdiction over such development, including Section 404 of the Clean Water Act.¹²⁵ In the event of conflicting permit requirements, the Floodplain Administrator must ensure that the most restrictive floodplain management standards are reflected in permit approvals.

§ 183-19. Determination of local design flood elevations.

- A. If design flood elevations are not specified, the Floodplain Administrator is authorized to require the applicant to:
 - (1) Obtain, review, and reasonably utilize data available from a federal, state, or other source; or
 - (2) Determine the design flood elevation in accordance with accepted hydrologic and hydraulic engineering techniques. Such analyses shall be performed and sealed by a licensed professional

¹²⁵Editor's Note: See 33 U.S.C. § 1344.

engineer. Studies, analyses, and computations shall be submitted in sufficient detail to allow review and approval by the Floodplain Administrator. The accuracy of data submitted for such determination shall be the responsibility of the applicant.

- B. It shall be the responsibility of the Floodplain Administrator to verify that the applicant's proposed best available flood hazard data area and the local design flood elevation in any development permit accurately applies the best available flood hazard data and methodologies for determining flood hazard areas and design elevations described in § 183-11 and § 183-12 respectively. This information shall be provided to the Construction Official and documented according to § 183-27.

§ 183-20. Requirement to submit new technical data.

Base flood elevations may increase or decrease resulting from natural changes (e.g., erosion, accretion, channel migration, subsidence, uplift) or man-made physical changes (e.g., dredging, filling, excavation) affecting flooding conditions. As soon as practicable, but not later than six months after the date of a man-made change or when information about a natural change becomes available, the Floodplain Administrator shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Title 44 CFR 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

§ 183-21. Activities in riverine flood hazard areas.

In riverine flood hazard areas where design flood elevations are specified but floodways have not been designated, the Floodplain Administrator shall not permit any new construction, substantial improvement or other development, including the placement of fill, unless the applicant submits an engineering analysis prepared by a licensed professional engineer that demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachment, will not increase the design flood elevation more than 0.2 feet at any point within the community.

§ 183-22. Floodway encroachment.

- A. Prior to issuing a permit for any floodway encroachment, including fill, new construction, substantial improvements and other development or land-disturbing activity, the Floodplain Administrator shall require submission of a certification prepared by a licensed professional engineer, along with supporting technical data, that demonstrates that such development will not cause any increase in the base flood level.
- B. Floodway revisions. A floodway encroachment that increases the level of the base flood is authorized if the applicant has applied for a conditional letter of map revision (CLOMR) to the Flood Insurance Rate Map (FIRM) and has received the approval of FEMA.

§ 183-23. Watercourse alteration.

- A. Prior to issuing a permit for any alteration or relocation of any watercourse, the Floodplain Administrator shall require the applicant to provide notification of the proposal to the appropriate authorities of all adjacent government jurisdictions, as well as the NJDEP Bureau of Flood Engineering and the Division of Land Resource Protection. A copy of the notification shall be maintained in the permit records and submitted to FEMA.
- B. Engineering analysis. The Floodplain Administrator shall require submission of an engineering

analysis prepared by a licensed professional engineer, demonstrating that the flood-carrying capacity of the altered or relocated portion of the watercourse will be maintained, neither increased nor decreased. Such watercourses shall be maintained in a manner that preserves the channel's flood-carrying capacity.

§ 183-24. Alterations in coastal areas.

The excavation or alteration of sand dunes is governed by the New Jersey Coastal Zone Management (CZM) rules, N.J.A.C. 7:7. Prior to issuing a flood damage prevention permit for any alteration of sand dunes in coastal high hazard areas and Coastal A Zones, the Floodplain Administrator shall require that a New Jersey CZM permit be obtained and included in the flood damage prevention permit application. The applicant shall also provide documentation of any engineering analysis, prepared by a licensed professional engineer, that demonstrates that the proposed alteration will not increase the potential for flood damage.

§ 183-25. Development in riparian zones.

All development in Riparian Zones as described in N.J.A.C. 7:13 is prohibited by this chapter unless the applicant has received an individual or general permit or has complied with the requirements of a permit by rule or permit by certification from NJDEP Division of Land Resource Protection prior to application for a floodplain development permit and the project is compliant with all other Floodplain Development provisions of this chapter. The width of the riparian zone can range between 50 and 300 feet and is determined by the attributes of the waterbody and designated in the New Jersey Surface Water Quality Standards N.J.A.C. 7:9B. The portion of the riparian zone located outside of a regulated water is measured landward from the top-of-bank. Applicants can request a verification of the riparian zone limits or a permit applicability determination to determine State permit requirements under N.J.A.C. 7:13 from the NJDEP Division of Land Resource Protection.

§ 183-26. Substantial improvement and substantial damage determinations.

When buildings and structures are damaged due to any cause, including, but not limited to, man-made, structural, electrical, mechanical, or natural hazard events, or are determined to be unsafe as described in N.J.A.C. 5:23; and for applications for building permits to improve buildings and structures, including alterations, movement, repair, additions, rehabilitations, renovations, ordinary maintenance and minor work, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Construction Official, shall:

- A. Estimate the market value, or require the applicant to obtain a professional appraisal prepared by a qualified independent appraiser, of the market value of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
- B. Determine and include the costs of all ordinary maintenance and minor work, as discussed in § 183-11, performed in the floodplain regulated by this chapter in addition to the costs of those improvements regulated by the Construction Official in substantial damage and substantial improvement calculations.
- C. Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, where applicable, to the market value of the building or structure.

- D. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.
- E. Notify the applicant, in writing, when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood-resistant construction requirements of the building code is required and notify the applicant, in writing, when it is determined that work does not constitute substantial improvement or repair of substantial damage. The Floodplain Administrator shall also provide all letters documenting substantial damage and compliance with flood-resistant construction requirements of the building code to the NJDEP Bureau of Flood Engineering.

§ 183-27. Department records.

In addition to the requirements of the building code and these regulations, and regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of these regulations and the flood provisions of the Uniform Construction Code, including Flood Insurance Studies, Flood Insurance Rate Maps; documents from FEMA that amend or revise FIRMs; NJDEP delineations, records of issuance of permits and denial of permits; records of ordinary maintenance and minor work, determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required certifications and documentation specified by the Uniform Construction Code and these regulations including as-built elevation certificates; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurance that the flood-carrying capacity of altered waterways will be maintained; documentation related to variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to these regulations and the flood resistant provisions of the Uniform Construction Code. The Floodplain Administrator shall also record the required elevation, determination method, and base flood elevation source used to determine the local design flood elevation in the floodplain development permit.

§ 183-28. Liability.

The Floodplain Administrator and any employee charged with the enforcement of these regulations, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by these regulations or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of these regulations shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The Floodplain Administrator and any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of these regulations.

ARTICLE IV
Permits

§ 183-29. Permits required.

Any person, owner or authorized agent who intends to conduct any development in a flood hazard area shall first make application to the Floodplain Administrator and shall obtain the required permit. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

§ 183-30. Application for permit.

The applicant shall file an application, in writing, on a form furnished by the Floodplain Administrator. Such application shall:

- A. Identify and describe the development to be covered by the permit.
- B. Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
- C. Indicate the use and occupancy for which the proposed development is intended.
- D. Be accompanied by a site plan and construction documents as specified in Article V of these regulations, grading and filling plans and other information deemed appropriate by the Floodplain Administrator.
- E. State the valuation of the proposed work, including the valuation of ordinary maintenance and minor work.
- F. Be signed by the applicant or the applicant's authorized agent.

§ 183-31. Validity of permit.

The issuance of a permit under these regulations or the Uniform Construction Code shall not be construed to be a permit for, or approval of, any violation of this appendix or any other ordinance of the jurisdiction. The issuance of a permit based on submitted documents and information shall not prevent the Floodplain Administrator from requiring the correction of errors. The Floodplain Administrator is authorized to prevent occupancy or use of a structure or site which is in violation of these regulations or other ordinances of this jurisdiction.

§ 183-32. Expiration.

A permit shall become invalid when the proposed development is not commenced within 180 days after its issuance, or when the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions shall be requested, in writing, and justifiable cause demonstrated. The Floodplain Administrator is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each.

§ 183-33. Suspension or revocation.

The Floodplain Administrator is authorized to suspend or revoke a permit issued under these regulations

wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or code of this jurisdiction.

ARTICLE V
Site Plans and Construction Documents

§ 183-34. Information for development in flood hazard areas.

- A. The site plan or construction documents for any development subject to the requirements of these regulations shall be drawn to scale and shall include, as applicable to the proposed development:
- (1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations when necessary for review of the proposed development. For buildings that are located in more than one flood hazard area, the elevation and provisions associated with the most restrictive flood hazard area shall apply.
 - (2) Where base flood elevations or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with § 183-35.
 - (3) Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than five acres and base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with § 183-35A(3) of these regulations.
 - (4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas and Coastal A zones, new buildings shall be located landward of the reach of mean high tide.
 - (5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
 - (6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose. The applicant shall provide an engineering certification confirming that the proposal meets the flood storage displacement limitations of N.J.A.C. 7:13.
 - (7) Extent of any proposed alteration of sand dunes.
 - (8) Existing and proposed alignment of any proposed alteration of a watercourse.
 - (9) Floodproofing certifications, V Zone and breakaway wall certifications, operations and maintenance plans, warning and evacuation plans and other documentation required pursuant to FEMA publications.
- B. The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by these regulations but that are not required to be prepared by a registered design professional when it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance.

§ 183-35. Information in flood hazard areas without base flood elevations (approximate Zone A).

- A. Where flood hazard areas are delineated on the effective or preliminary FIRM and base flood elevation data have not been provided, the applicant shall consult with the Floodplain Administrator to determine whether to:
- (1) Use the Approximation Method (Method 5) described in N.J.A.C. 7:13 in conjunction with

Appendix 1 of the FHACA to determine the required flood elevation.

- (2) Obtain, review, and reasonably utilize data available from a federal, state or other source when those data are deemed acceptable to the Floodplain Administrator to reasonably reflect flooding conditions.
 - (3) Determine the base flood elevation in accordance with accepted hydrologic and hydraulic engineering techniques according to Method 6 as described in N.J.A.C. 7:13. Such analyses shall be performed and sealed by a licensed professional engineer.
- B. Studies, analyses, and computations shall be submitted in sufficient detail to allow review and approval by the Floodplain Administrator prior to floodplain development permit issuance. The accuracy of data submitted for such determination shall be the responsibility of the applicant. Where the data are to be used to support a letter of map change (LOMC) from FEMA, the applicant shall be responsible for satisfying the submittal requirements and pay the processing fees.

§ 183-36. Analyses and certifications by a licensed professional engineer.

As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a licensed professional engineer for submission with the site plan and construction documents:

- A. For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in § 183-37 of these regulations and shall submit the conditional letter of map revision, if issued by FEMA, with the site plan and construction documents.
- B. For development activities proposed to be located in a riverine flood hazard area where base flood elevations are included in the FIS or FIRM but floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments will not increase the base flood elevation more than 0.2 feet at any point within the jurisdiction. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.
- C. For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained, neither increasing nor decreasing the channel's flood-carrying capacity. The applicant shall submit the analysis to FEMA as specified in § 183-37 of these regulations. The applicant shall notify the chief executive officer of all affected adjacent jurisdictions, the NJDEP's Bureau of Flood Engineering and the Division of Land Resource Protection; and shall provide documentation of such notifications.
- D. For activities that propose to alter sand dunes in coastal high hazard areas (Zone V) and Coastal A Zones, an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage and documentation of the issuance of a New Jersey Coastal Zone Management permit under N.J.A.C. 7:7.
- E. For analyses performed using Methods 5 and 6 (as described in N.J.A.C. 7:13) in flood hazard zones

without base flood elevations (approximate A zones).

§ 183-37. Submission of additional data.

When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a letter of map change (LOMC) from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

ARTICLE VI

Inspections**§ 183-38. General.**

Development for which a permit is required shall be subject to inspection. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of these regulations or the building code. Inspections presuming to give authority to violate or cancel the provisions of these regulations or the building code or other ordinances shall not be valid.

§ 183-39. Inspections of development.

The Floodplain Administrator shall inspect all development in flood hazard areas authorized by issuance of permits under these regulations. The Floodplain Administrator shall inspect flood hazard areas from time to time to determine if development is undertaken without issuance of a permit.

§ 183-40. Buildings and structures.

The Construction Official shall make, or cause to be made, inspections for buildings and structures in flood hazard areas authorized by permit in accordance with the Uniform Construction Code, N.J.A.C. 5:23.

- A. Lowest floor elevation. Upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in § 183-76 shall be submitted to the Construction Official on an elevation certificate.
- B. Lowest horizontal structural member. In V zones and Coastal A zones, upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in § 183-76 shall be submitted to the Construction Official on an elevation certificate.
- C. Installation of attendant utilities (electrical, heating, ventilating, air-conditioning, and other service equipment) and sanitary facilities elevated as discussed in § 183-76.
- D. Final inspection. Prior to the final inspection, certification of the elevation required in § 183-76 shall be submitted to the construction official on an elevation certificate.

§ 183-41. Manufactured homes.

The Floodplain Administrator shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of these regulations and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted on an elevation certificate to the Floodplain Administrator prior to the final inspection.

ARTICLE VII Variances

§ 183-42. General.

The Planning Board shall hear and decide requests for variances. The Planning Board shall base its determination on technical justifications submitted by applicants, the considerations for issuance in § 183-46, the conditions of issuance set forth in § 183-47, and the comments and recommendations of the Floodplain Administrator and, as applicable, the Construction Official. The Planning Board has the right to attach such conditions to variances as it deems necessary to further the purposes and objectives of these regulations.

§ 183-43. Historic structures.

A variance to the substantial improvement requirements of this chapter is authorized provided that the repair or rehabilitation of a historic structure is completed according to N.J.A.C. 5:23-6.33, Section 1612 of the International Building Code and R322 of the International Residential Code, the repair or rehabilitation will not preclude the structure's continued designation as a historic structure, the structure meets the definition of the historic structure as described by this chapter, and the variance is the minimum necessary to preserve the historic character and design of the structure.

§ 183-44. Functionally dependent uses.

A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, provided the variance is the minimum necessary to allow the construction or substantial improvement, and that all due consideration has been given to use of methods and materials that minimize flood damage during the base flood and create no additional threats to public safety.

§ 183-45. Restrictions in floodways.

A variance shall not be issued for any proposed development in a floodway when any increase in flood levels would result during the base flood discharge, as evidenced by the applicable analysis and certification required in § 183-36A of these regulations.

§ 183-46. Considerations.

In reviewing requests for variances, all technical evaluations, all relevant factors, all other portions of these regulations, and the following shall be considered:

- A. The danger that materials and debris may be swept onto other lands resulting in further injury or damage.
- B. The danger to life and property due to flooding or erosion damage.
- C. The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners.
- D. The importance of the services provided by the proposed development to the community.
- E. The availability of alternate locations for the proposed development that are not subject to flooding or erosion and the necessity of a waterfront location, where applicable.

- F. The compatibility of the proposed development with existing and anticipated development.
- G. The relationship of the proposed development to the comprehensive plan and floodplain management program for that area.
- H. The safety of access to the property in times of flood for ordinary and emergency vehicles.
- I. The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwater and the effects of wave action, where applicable, expected at the site.
- J. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets, and bridges.

§ 183-47. Conditions for issuance.

- A. Variances shall only be issued upon:
 - (1) Submission by the applicant of a showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site limit compliance with any provision of these regulations or renders the elevation standards of the building code inappropriate.
 - (2) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable.
 - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
 - (4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (5) Notification to the applicant, in writing, over the signature of the Floodplain Administrator that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and that such construction below the base flood level increases risks to life and property.

ARTICLE VIII

Violations**§ 183-48. Violations.**

Any development in any flood hazard area that is being performed without an issued permit or that is in conflict with an issued permit shall be deemed a violation. A building or structure without the documentation of elevation of the lowest floor, the lowest horizontal structural member if in a V or Coastal A Zone, other required design certifications, or other evidence of compliance required by the building code is presumed to be a violation until such time as that documentation is provided.

§ 183-49. Authority.

The Floodplain Administrator is authorized to serve notices of violation or stop-work orders to owners of property involved, to the owner's agent, or to the person or persons doing the work for development that is not within the scope of the Uniform Construction Code, but is regulated by these regulations and that is determined to be a violation.

§ 183-50. Unlawful continuance.

Any person who shall continue any work after having been served with a notice of violation or a stop-work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by N.J.S.A. 40:49-5 as appropriate.

§ 183-51. Review period to correct violations.

A thirty-day period shall be given to the property owner as an opportunity to cure or abate the condition. The property owner shall also be afforded an opportunity for a hearing before the court for an independent determination concerning the violation. Subsequent to the expiration of the thirty-day period, a fine greater than \$1,250 may be imposed if a court has not determined otherwise or, upon reinspection of the property, it is determined that the abatement has not been substantially completed.

ARTICLE IX

Definitions**§ 183-52. General.**

The following words and terms shall, for the purposes of these regulations, have the meanings shown herein. Other terms are defined in the Uniform Construction Code N.J.A.C. 5:23 and terms are defined where used in the International Residential Code and International Building Code (rather than in the definitions section). Where terms are not defined, such terms shall have ordinarily accepted meanings such as the context implies.

§ 183-53. Definitions.

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

100-YEAR FLOOD ELEVATION — Elevation of flooding having a 1% annual chance of being equaled or exceeded in a given year which is also referred to as the base flood elevation.

500-YEAR FLOOD ELEVATION — Elevation of flooding having a 0.2% annual chance of being equaled or exceeded in a given year.

A ZONES — Areas of "special flood hazard" in which the elevation of the surface water resulting from a flood that has a 1% annual chance of equaling or exceeding the base flood elevation (BFE) in any given year shown on the Flood Insurance Rate Map (FIRM) Zones A, AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, and AR/AO. When used in reference to the development of a structure in this chapter, "A Zones" are not inclusive of Coastal A Zones because of the higher building code requirements for Coastal A Zones.

ACCESSORY STRUCTURE — Accessory structures are also referred to as "appurtenant structures." An accessory structure is a structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For example, a residential structure may have a detached garage or storage shed for garden tools as accessory structures. Other examples of accessory structures include gazebos, picnic pavilions, boathouses, small pole barns, storage sheds, and similar buildings.

AGRICULTURAL STRUCTURE — A structure used solely for agricultural purposes in which the use is exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock. Communities must require that new construction or substantial improvements of agricultural structures be elevated or floodproofed to or above the base flood elevation (BFE) as any other nonresidential building. Under some circumstances it may be appropriate to wet-floodproof certain types of agricultural structures when located in wide, expansive floodplains through issuance of a variance. This should only be done for structures used for temporary storage of equipment or crops or temporary shelter for livestock and only in circumstances where it can be demonstrated that agricultural structures can be designed in such a manner that results in minimal damage to the structure and its contents and will create no additional threats to public safety. New construction or substantial improvement of livestock confinement buildings, poultry houses, dairy operations, similar livestock operations and any structure that represents more than a minimal investment must meet the elevation or dry-floodproofing requirements of 44 CFR 60.3(c)(3).

AH ZONES — Areas subject to inundation by 1%-annual-chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Base flood elevations (BFEs) derived from detailed hydraulic analyses are shown in this zone.

ALTERATION OF A WATERCOURSE — A dam, impoundment, channel relocation, change in channel

alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

AO ZONES — Areas subject to inundation by 1%-annual-chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet.

AREA OF SHALLOW FLOODING — A designated Zone AO, AH, AR/AO or AR/AH (or VO) on a community's Flood Insurance Rate Map (FIRM) with a 1% or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD — See "SPECIAL FLOOD HAZARD AREA."

ASCE 7 — The standard for the Minimum Design Loads for Buildings and Other Structures, referenced by the building code and developed and published by the American Society of Civil Engineers, Reston, VA, which includes, but is not limited to, methodology and equations necessary for determining structural and flood-related design requirements and determining the design requirements for structures that may experience a combination of loads including those from natural hazards. Flood-related equations include those for determining erosion, scour, lateral, vertical, hydrostatic, hydrodynamic, buoyancy, breaking wave, and debris impact.

ASCE 24 — The standard for Flood Resistant Design and Construction, referenced by the building code and developed and published by the American Society of Civil Engineers, Reston, VA. References to ASCE 24 shall mean ASCE 24-14 or the most recent version of ASCE 24 adopted in the UCC Code (N.J.A.C. 5:23).

BASE FLOOD ELEVATION (BFE) — The water surface elevation resulting from a flood that has a 1% or greater chance of being equaled or exceeded in any given year, as shown on a published Flood Insurance Study (FIS), or preliminary flood elevation guidance from FEMA. May also be referred to as the "100-year flood elevation."

BASEMENT — Any area of the building having its floor subgrade (below ground level) on all sides.

BEST AVAILABLE FLOOD HAZARD DATA — The most recent available preliminary flood risk guidance FEMA has provided. The best available flood hazard data may be depicted on, but not limited to, advisory flood hazard area maps, work maps, or preliminary FIS and FIRM.

BEST AVAILABLE FLOOD HAZARD DATA AREA — The aerial mapped extent associated with the most recent available preliminary flood risk guidance FEMA has provided. The best available flood hazard data may be depicted on, but not limited to, advisory flood hazard area maps, work maps, or preliminary FIS and FIRM.

BEST AVAILABLE FLOOD HAZARD DATA ELEVATION — The most recent available preliminary flood elevation guidance FEMA has provided. The best available flood hazard data may be depicted on, but not limited to, advisory flood hazard area maps, work maps, or preliminary FIS and FIRM.

BREAKAWAY WALLS — Any type of wall subject to flooding that is not required to provide structural support to a building or other structure and that is designed and constructed such that, below the local design flood elevation, it will collapse under specific lateral loads such that 1) it allows the free passage of floodwaters, and 2) it does not damage the structure or supporting foundation system. Certification in the V Zone certificate of the design, plans, and specifications by a licensed design professional that these walls are in accordance with accepted standards of practice is required as part of the permit application for new and substantially improved V Zone and Coastal A Zone structures. A completed certification must be

submitted at permit application.

BUILDING — Per the FHACA, "building" means a structure enclosed with exterior walls or fire walls, erected and framed of component structural parts, designed for the housing, shelter, enclosure, and support of individuals, animals, or property of any kind. A building may have a temporary or permanent foundation. A building that is intended for regular human occupation and/or residence is considered a habitable building.

COASTAL A ZONE — An area of special flood hazard starting from a Velocity (V) Zone and extending up to the landward limit of the moderate wave action delineation. Where no V Zone is mapped the Coastal A Zone is the portion between the open coast and the landward limit of the moderate wave action delineation. Coastal A Zones may be subject to wave effects, velocity flows, erosion, scour, or a combination of these forces. Construction and development in Coastal A Zones is to be regulated similarly to V Zones/Coastal High Hazard Areas except as allowed by ASCE 24.

COASTAL HIGH HAZARD AREA — An area of special flood hazard inclusive of the V Zone extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

CONDITIONAL LETTER OF MAP REVISION — A conditional letter of map revision (CLOMR) is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations (BFEs), or the special flood hazard area (SFHA). The letter does not revise an effective NFIP map, it indicates whether the project, if built as proposed, would be recognized by FEMA. FEMA charges a fee for processing a CLOMR to recover the costs associated with the review that is described in the letter of map change (LOMC) process. Building permits cannot be issued based on a CLOMR because a CLOMR does not change the NFIP map.

CONDITIONAL LETTER OF MAP REVISION - FILL — A conditional letter of map revision - fill (CLOMR-F) is FEMA's comment on a proposed project involving the placement of fill outside of the regulatory floodway that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations (BFEs), or the special flood hazard area (SFHA). The letter does not revise an effective NFIP map, it indicates whether the project, if built as proposed, would be recognized by FEMA. FEMA charges a fee for processing a CLOMR to recover the costs associated with the review that is described in the letter of map change (LOMC) process. Building permits cannot be issued based on a CLOMR because a CLOMR does not change the NFIP map.

CRITICAL BUILDING — Per the FHACA, "critical building" means that:

- A. It is essential to maintaining continuity of vital government operations and/or supporting emergency response, sheltering, and medical care functions before, during, and after a flood, such as a hospital, medical clinic, police station, fire station, emergency response center, or public shelter; or
- B. It serves large numbers of people who may be unable to leave the facility through their own efforts, thereby hindering or preventing safe evacuation of the building during a flood event, such as a school, college, dormitory, jail or detention facility, day-care center, assisted living facility, or nursing home.

DEEP FOUNDATIONS — Per ASCE 24, deep foundations refer to those foundations constructed on erodible soils in Coastal High Hazard and Coastal A Zones which are founded on piles, drilled shafts, caissons, or other types of deep foundations and are designed to resist erosion and scour and support lateral and vertical loads as described in ASCE 7. Foundations shall extend to 10 feet below mean water level

(MWL) unless the design demonstrates that pile penetration will provide sufficient depth and stability as determined by ASCE 24, ASCE 7, and additional geotechnical investigations if any unexpected conditions are encountered during construction.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, drilling operations and other land-disturbing activities.

DRY FLOODPROOFING — A combination of measures that results in a nonresidential structure, including the attendant utilities and equipment as described in the latest version of ASCE 24, being watertight with all elements substantially impermeable and with structural components having the capacity to resist flood loads.

ELEVATED BUILDING — A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns. Solid perimeter foundations walls are not an acceptable means of elevating buildings in V and VE Zones.

ELEVATION CERTIFICATE — An administrative tool of the National Flood Insurance Program (NFIP) that can be used to provide elevation information, to determine the proper insurance premium rate, and to support an application for a letter of map amendment (LOMA) or letter of map revision based on fill (LOMR-F).

ENCROACHMENT — The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

FEMA PUBLICATIONS — Any publication authored or referenced by FEMA related to building science, building safety, or floodplain management related to the National Flood Insurance Program. Publications shall include, but are not limited to, technical bulletins, desk references, and American Society of Civil Engineers Standards documents including ASCE 24.

FLOOD HAZARD AREA DESIGN FLOOD ELEVATION — Per the FHACA, the peak water surface elevation that will occur in a water during the flood hazard area design flood. This elevation is determined via available flood mapping adopted by the state, flood mapping published by FEMA (including effective flood mapping dated on or after January 31, 1980, or any more recent advisory, preliminary, or pending flood mapping; whichever results in higher flood elevations, wider floodway limits, greater flow rates, or indicates a change from an A Zone to a V Zone or Coastal A Zone), approximation, or calculation pursuant to the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-3.1 through 3.6 and is typically higher than FEMA's base flood elevation. A water that has a drainage area measuring less than 50 acres does not possess, and is not assigned, a flood hazard area design flood elevation.

FLOOD INSURANCE RATE MAP (FIRM) — The official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS) — The official report in which the Federal Emergency Management Agency has provided flood profiles, as well as the Flood Insurance Rate Map(s) and the water surface elevation of the base flood.

FLOOD or FLOODING —

- A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
 - (3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in Subsection A(2) of this definition and are akin to a river or liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in Subsection A(1) of this definition.

FLOODPLAIN MANAGEMENT REGULATIONS — Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOODPLAIN or FLOOD-PRONE AREA — Any land area susceptible to being inundated by water from any source. See "flood or flooding."

FLOODPROOFING — Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

FLOODPROOFING CERTIFICATE — Certification by a licensed design professional that the design and methods of construction for floodproofing a nonresidential structure are in accordance with accepted standards of practice to a proposed height above the structure's lowest adjacent grade that meets or exceeds the local design flood elevation. A completed floodproofing certificate is required at permit application.

FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 0.2 foot.

FREEBOARD — A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

FUNCTIONALLY DEPENDENT USE — A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities necessary for the loading or unloading of cargo or passengers, and shipbuilding and ship repair facilities. The term does not include long-term storage or related manufacturing facilities.

HABITABLE BUILDING — Pursuant to the FHACA Rules (N.J.A.C. 7:13), a building that is intended for regular human occupation and/or residence. Examples of a habitable building include a single-family home, duplex, multiresidence building, or critical building; a commercial building such as a retail store, restaurant, office building, or gymnasium; an accessory structure that is regularly occupied, such as a garage, barn, or workshop; mobile and manufactured homes, and trailers intended for human residence, which are set on a foundation and/or connected to utilities, such as in a mobile home park (not including campers and recreational vehicles); and any other building that is regularly occupied, such as a house of

worship, community center, or meeting hall, or animal shelter that includes regular human access and occupation. Examples of a nonhabitable building include a bus stop shelter, utility building, storage shed, self-storage unit, construction trailer, or an individual shelter for animals such as a doghouse or outdoor kennel.

HARDSHIP — As related to Article VII of this chapter, the exceptional hardship that would result from a failure to grant the requested variance. The Mayor and Council requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface prior to construction next to the proposed or existing walls of a structure.

HISTORIC STRUCTURE — Any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior; or
 - (2) Directly by the Secretary of the Interior in States without approved programs.

LAWFULLY EXISTING — Per the FHACA, an existing fill, structure and/or use, which meets all federal, state, and local laws, and which is not in violation of the FHACA because it was established:

- A. Prior to January 31, 1980; or
- B. On or after January 31, 1980, in accordance with the requirements of the FHACA as it existed at the time the fill, structure and/or use was established.

Note: Substantially damaged properties and substantially improved properties that have not been elevated are not considered "lawfully existing" for the purposes of the NFIP. This definition is included in this chapter to clarify the applicability of any more stringent statewide floodplain management standards required under the FHACA.

LETTER OF MAP AMENDMENT — A letter of map amendment (LOMA) is an official amendment, by letter, to an effective National Flood Insurance Program (NFIP) map that is requested through the letter of map change (LOMC) process. A LOMA establishes a property's location in relation to the special flood hazard area (SFHA). LOMAs are usually issued because a property has been inadvertently mapped as

being in the floodplain but is actually on natural high ground above the base flood elevation. Because a LOMA officially amends the effective NFIP map, it is a public record that the community must maintain. Any LOMA should be noted on the community's master flood map and filed by panel number in an accessible location.

LETTER OF MAP CHANGE — The Letter of Map Change (LOMC) process is a service provided by FEMA for a fee that allows the public to request a change in flood zone designation in an Area of Special Flood Hazard on a Flood Insurance Rate Map (FIRM). Conditional Letters of Map Revision, Conditional Letters of Map Revision -Fill, Letters of Map Revision, Letters of Map Revision-Fill, and Letters of Map Amendment are requested through the Letter of Map Change (LOMC) process.

LETTER OF MAP REVISION — A letter of map revision (LOMR) is FEMA's modification to an effective Flood Insurance Rate Map (FIRM). Letter of map revisions are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations (BFEs), or the special flood hazard area (SFHA). The LOMR officially revises the Flood Insurance Rate Map (FIRM) and sometimes the Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM or FIS report. Because a LOMR officially revises the effective NFIP map, it is a public record that the community must maintain. Any LOMR should be noted on the community's master flood map and filed by panel number in an accessible location.

LETTER OF MAP REVISION - FILL — A letter of map revision based on fill (LOMR-F) is FEMA's modification of the special flood hazard area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway may be initiated through the letter of map change (LOMC) Process. Because a LOMR-F officially revises the effective Flood Insurance Rate Map (FIRM) map, it is a public record that the community must maintain. Any LOMR-F should be noted on the community's master flood map and filed by panel number in an accessible location.

LICENSED DESIGN PROFESSIONAL — Shall refer to either a New Jersey licensed professional engineer, licensed by the New Jersey State Board of Professional Engineers and Land Surveyors or a New Jersey licensed architect, licensed by the New Jersey State Board of Architects.

LICENSED PROFESSIONAL ENGINEER — Shall refer to individuals licensed by the New Jersey State Board of Professional Engineers and Land Surveyors.

LIMIT OF MODERATE WAVE ACTION (LiMWA) — Inland limit of the area affected by waves greater than 1.5 feet during the base flood. Base flood conditions between the VE Zone and the LiMWA will be similar to but less severe than those in the VE Zone.

LOCAL DESIGN FLOOD ELEVATION (LDFE) — The elevation reflective of the most recent available preliminary flood elevation guidance FEMA has provided as depicted on, but not limited to, Advisory flood hazard area Maps, work maps, or Preliminary FIS and FIRM which is also inclusive of freeboard specified by the New Jersey Flood Hazard Area Control Act and Uniform Construction Codes and any additional freeboard specified in a community's ordinance. In no circumstances shall a project's LDFE be lower than a permit-specified flood hazard area design flood elevation or a valid NJDEP flood hazard area verification letter plus the freeboard as required in ASCE 24 and the effective FEMA base flood elevation.

LOWEST ADJACENT GRADE — The lowest point of ground, patio, or sidewalk slab immediately next to a structure, except in AO Zones where it is the natural grade elevation.

LOWEST FLOOR — In A Zones, the lowest floor is the top surface of the lowest floor of the lowest enclosed area (including basement). In V Zones and Coastal A Zones, the bottom of the lowest horizontal structural member of a building is the lowest floor. An unfinished or flood-resistant enclosure, usable

solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of other applicable nonelevation design requirements of these regulations.

LOWEST HORIZONTAL STRUCTURAL MEMBER — In an elevated building in a Coastal A or Coastal High Hazard Zone, the lowest beam, joist, or other horizontal member that supports the building is the lowest horizontal structural member. Grade beams installed to support vertical foundation members where they enter the ground are not considered lowest horizontal members.

MANUFACTURED HOME — A structure that is transportable in one or more sections, eight feet or more in width and greater than 400 square feet, built on a permanent chassis, designed for use with or without a permanent foundation when attached to the required utilities, and constructed to the Federal Manufactured Home Construction and Safety Standards and rules and regulations promulgated by the U.S. Department of Housing and Urban Development. The term also includes mobile homes, park trailers, travel trailers and similar transportable structures that are placed on a site for 180 consecutive days or longer.

MANUFACTURED HOME PARK OR SUBDIVISION — A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MARKET VALUE — The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in these regulations, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value shall be determined by one of the following methods 1) actual cash value (replacement cost depreciated for age and quality of construction), 2) tax assessment value adjusted to approximate market value by a factor provided by the property appraiser, or 3) established by a qualified independent appraiser.

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective date of the first floodplain regulation adopted by a community; includes any subsequent improvements to such structures. New construction includes work determined to be a substantial improvement.

NONRESIDENTIAL — Pursuant to ASCE 24, any building or structure or portion thereof that is not classified as residential.

ORDINARY MAINTENANCE AND MINOR WORK — This term refers to types of work excluded from construction permitting under N.J.A.C. 5:23 in the March 5, 2018, New Jersey Register. Some of these types of work must be considered in determinations of substantial improvement and substantial damage in regulated floodplains under 44 CFR 59.1. These types of work include, but are not limited to, replacements of roofing, siding, interior finishes, kitchen cabinets, plumbing fixtures and piping, HVAC and air-conditioning equipment, exhaust fans, built-in appliances, electrical wiring, etc. Improvements necessary to correct existing violations of state or local health, sanitation, or code enforcement officials which are the minimum necessary to assure safe living conditions and improvements of historic structures as discussed in 44 CFR 59.1 shall not be included in the determination of ordinary maintenance and minor work.

RECREATIONAL VEHICLE — A vehicle that is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light-duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect-type utilities and security devices and has no permanently attached additions.

RESIDENTIAL — Pursuant to the ASCE 24:

- A. Buildings and structures and portions thereof where people live or that are used for sleeping purposes on a transient or nontransient basis;
- B. Structures, including, but not limited to, one- and two-family dwellings, townhouses, condominiums, multi-family dwellings, apartments, congregate residences, boarding houses, lodging houses, rooming houses, hotels, motels, apartment buildings, convents, monasteries, dormitories, fraternity houses, sorority houses, vacation time-share properties; and
- C. Institutional facilities where people are cared for or live on a twenty-four-hour basis in a supervised environment, including, but not limited to, board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug centers, convalescent facilities, hospitals, nursing homes, mental hospitals, detoxification facilities, prisons, jails, reformatories, detention centers, correctional centers, and prerelease centers.

SOLID WASTE DISPOSAL — The storage, treatment, utilization, processing or final disposition of solid waste as described in N.J.A.C. 7:26-1.6 or the storage of unsecured materials as described in N.J.A.C. 7:13-2.3 for a period of greater than six months as specified in N.J.A.C. 7:26 which have been discharged, deposited, injected, dumped, spilled, leaked, or placed into any land or water such that such solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

SPECIAL FLOOD HAZARD AREA — The greater of the following: 1) land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year, shown on the FIRM as Zone V, VE, V1-30, A, AO, A1-30, AE, A99, or AH; 2) land and the space above that land, which lies below the peak water surface elevation of the flood hazard area design flood for a particular water, as determined using the methods set forth in the New Jersey Flood Hazard Area Control Act in N.J.A.C. 7:13; 3) riparian buffers as determined in the New Jersey Flood Hazard Area Control Act in N.J.A.C. 7:13. Also referred to as the "area of special flood hazard."

START OF CONSTRUCTION — The start of construction is as follows:

- A. For other than new construction or substantial improvements, under the Coastal Barrier Resources Act (CBRA),¹²⁶ this is the date the building permit was issued, provided that the actual start of construction, repair, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of a building on site, such as the pouring of a slab or footing, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured (mobile) home on a foundation. For a substantial improvement, "actual start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- B. For the purposes of determining whether proposed construction must meet new requirements when National Flood Insurance Program (NFIP) maps are issued or revised and base flood elevations (BFEs) increase or zones change, the start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation;

126. Editor's Note: See 16 U.S.C. § 3501 et seq.

or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. Such development must also be permitted and must meet new requirements when National Flood Insurance Program (NFIP) maps are issued or revised and base flood elevations (BFEs) increase or zones change. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building. For determining if new construction and substantial improvements within the Coastal Barrier Resources System (CBRS) can obtain flood insurance, a different definition applies.

STRUCTURE — A walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground.

SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any reconstruction, rehabilitation, addition, or other improvement of a structure taking place, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

THIRTY-DAY PERIOD — The period of time prescribed by N.J.S.A. 40:49-5 in which a property owner is afforded the opportunity to correct zoning and solid waste disposal after a notice of violation pertaining to this chapter has been issued.

UTILITY AND MISCELLANEOUS GROUP U BUILDINGS AND STRUCTURES — Buildings and structures of an accessory character and miscellaneous structures not classified in any special occupancy, as described in ASCE 24.

V ZONE CERTIFICATE — A certificate that contains a certification signed by a licensed design professional certifying that the designs, plans, and specifications and the methods of construction in V Zones and Coastal A Zones are in accordance with accepted standards of practice. This certificate also includes an optional breakaway wall design certification for enclosures in these zones below the best available flood hazard data elevation. A completed certification is required at permit application.

V ZONES — Areas of special flood hazard in which the elevation of the surface water resulting from a flood that has a 1% annual chance of equaling or exceeding the base flood elevation in any given year shown on the Flood Insurance Rate Map (FIRM) zones V1-V30 and VE and is referred to as the Coastal High Hazard Area.

VARIANCE — A grant of relief from the requirements of this section which permits construction in a manner otherwise prohibited by this section where specific enforcement would result in unnecessary

hardship.

VIOLATION — A development that is not fully compliant with these regulations or the flood provisions of the building code. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION — The height, in relation to the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

WATERCOURSE — A river, creek, stream, channel, or other topographic feature in, on, through, or over which water flows at least periodically.

WET FLOODPROOFING — Floodproofing method that relies on the use of flood-damage-resistant materials and construction techniques in areas of a structure that are below the local design flood elevation by intentionally allowing them to flood. The application of wet floodproofing as a flood protection technique under the National Flood Insurance Program (NFIP) is limited to enclosures below elevated residential and nonresidential structures and to accessory and agricultural structures that have been issued variances by the community.

ARTICLE X
Subdivisions and Other Developments

§ 183-54. General.

Any subdivision proposal, including proposals for manufactured home parks and subdivisions, or other proposed new development in a flood hazard area shall be reviewed to assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electric and water systems are located and constructed to minimize or eliminate flood damage.
- C. Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwater around and away from structures.

§ 183-55. Subdivision requirements.

Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

- A. The flood hazard area, including floodways, coastal high hazard areas, and Coastal A Zones, and base flood elevations, as appropriate, shall be delineated on tentative subdivision plats.
- B. Residential building lots shall be provided with adequate buildable area outside the floodway.
- C. The design criteria for utilities and facilities set forth in these regulations and appropriate codes shall be met.

ARTICLE XI
Site Improvement

§ 183-56. Encroachment in floodways.

- A. Development, land disturbing activity, and encroachments in floodways shall not be authorized unless it has been demonstrated through hydrologic and hydraulic analyses required in accordance with § 183-36A of these regulations, that the proposed encroachment will not result in any increase in the base flood level during occurrence of the base flood discharge. If § 183-36A is satisfied, proposed elevation, addition, or reconstruction of a lawfully existing structure within a floodway shall also be in accordance with § 183-76 of this chapter and the floodway requirements of N.J.A.C. 7:13.
- B. Prohibited in floodways. The following are prohibited activities:
- (1) The storage of unsecured materials is prohibited within a floodway pursuant to N.J.A.C. 7:13.
 - (2) Fill and new structures are prohibited in floodways per N.J.A.C. 7:13.

§ 183-57. Coastal High Hazard Areas (V Zones) and Coastal A Zones.

In Coastal High Hazard Areas and Coastal A Zones:

- A. New buildings shall only be authorized landward of the reach of mean high tide.
- B. The placement of manufactured homes shall be prohibited except in an existing manufactured home park or subdivision.
- C. Basements or enclosures that are below grade on all sides are prohibited.
- D. The use of fill for structural support of buildings is prohibited.

§ 183-58. Sewer facilities.

All new and replaced sanitary sewer facilities, private sewage treatment plants (including all pumping stations and collector systems) and on-site waste disposal systems shall be designed in accordance with the New Jersey septic system regulations contained in N.J.A.C. 14A and N.J.A.C. 7:9A, the UCC Plumbing Subcode (N.J.A.C. 5:23) and Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwater into the facilities and discharge from the facilities into flood waters, or impairment of the facilities and systems.

§ 183-59. Water facilities.

All new and replacement water facilities shall be designed in accordance with the New Jersey Safe Drinking Water Act (N.J.A.C. 7:10) and the provisions of Chapter 7 ASCE 24, to minimize or eliminate infiltration of floodwater into the systems.

§ 183-60. Storm drainage.

Storm drainage shall be designed to convey the flow of surface waters to minimize or eliminate damage to persons or property.

§ 183-61. Streets and sidewalks.

Streets and sidewalks shall be designed to minimize potential for increasing or aggravating flood levels.

§ 183-62. Limitations on placement of fill.

Subject to the limitations of these regulations, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwater, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, when intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the UCC (N.J.A.C. 5:23). Proposed fill and encroachments in flood hazard areas shall comply with the flood storage displacement limitations of N.J.A.C. 7:13.

§ 183-63. Limitations on sites in coastal high hazard areas (V Zones) and Coastal A Zones.

In coastal high hazard areas and Coastal A Zones, alteration of sand dunes shall be permitted only when the engineering analysis required by § 183-36D of these regulations demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures shall comply with § 183-83C of these regulations and as permitted under the NJ Coastal Zone Management Rules (N.J.A.C. 7:7).

§ 183-64. Hazardous materials.

The placement or storage of any containers holding hazardous substances in a flood hazard area is prohibited unless the provisions of N.J.A.C. 7:13 which cover the placement of hazardous substances and solid waste are met.

ARTICLE XII
Manufactured Homes

§ 183-65. General.

All manufactured homes installed in flood hazard areas shall be installed pursuant to the Nationally Preemptive Manufactured Home Construction and Safety Standards Program (24 CFR 3280).

§ 183-66. Elevation.

All new, relocated, and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be elevated such that the bottom of the frame is elevated to or above the elevation specified in § 183-76.

§ 183-67. Foundations.

All new, relocated, and replacement manufactured homes, including substantial improvement of existing manufactured homes, shall be placed on permanent, reinforced foundations that are designed in accordance with Section R322 of the Residential Code.

§ 183-68. Anchoring.

All new, relocated, and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

§ 183-69. Enclosures.

Fully enclosed areas below elevated manufactured homes shall comply with the requirements of § 183-76.

§ 183-70. Protection of mechanical equipment and outside appliances.

- A. Mechanical equipment and outside appliances shall be elevated to or above the elevation of the bottom of the frame required in § 183-76 of these regulations.
- B. Exception. Where such equipment and appliances are designed and installed to prevent water from entering or accumulating within their components and the systems are constructed to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding up to the elevation required by § 183-76, the systems and equipment shall be permitted to be located below that elevation. Electrical wiring systems shall be permitted below the design flood elevation provided they conform to the provisions of NFPA 70 (National Electric Code).

ARTICLE XIII
Recreational Vehicles

§ 183-71. Placement prohibited.

The placement of recreational vehicles shall not be authorized in coastal high hazard areas and in floodways.

§ 183-72. Temporary placement.

Recreational vehicles in flood hazard areas shall be fully licensed and ready for highway use and shall be placed on a site for less than 180 consecutive days.

§ 183-73. Permanent placement.

Recreational vehicles that are not fully licensed and ready for highway use, or that are to be placed on a site for more than 180 consecutive days, shall meet the requirements of § 183-76 for habitable buildings.

ARTICLE XIV

Tanks

§ 183-74. Tanks.

Underground and aboveground tanks shall be designed, constructed, installed, and anchored in accordance with ASCE 24 and N.J.A.C. 7:13.

ARTICLE XV
Other Development and Building Work

§ 183-75. General requirements for other development and building work.

All development and building work, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in these regulations or the Uniform Construction Code (N.J.A.C. 5:23), shall:

- A. Be located and constructed to minimize flood damage;
- B. Meet the limitations of § 183-36A of this chapter when located in a regulated floodway;
- C. Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic and hydrodynamic loads, including the effects of buoyancy, during the conditions of flooding up to the local design flood elevation determined according to § 183-12;
- D. Be constructed of flood damage-resistant materials as described in ASCE 24 Chapter 5;
- E. Have mechanical, plumbing, and electrical systems above the local design flood elevation determined according to § 183-12 or meet the requirements of ASCE 24 Chapter 7 which requires that attendant utilities are located above the local design flood elevation unless the attendant utilities and equipment are:
 - (1) Specifically allowed below the local design flood elevation; and
 - (2) Designed, constructed, and installed to prevent floodwaters, including any backflow through the system from entering or accumulating within the components.
- F. Not exceed the flood storage displacement limitations in fluvial flood hazard areas in accordance with N.J.A.C. 7:13; and
- G. Not exceed the impacts to frequency or depth of off-site flooding as required by N.J.A.C. 7:13 in floodways.

§ 183-76. Requirements for habitable buildings and structures.

- A. Construction and elevation in A Zones, not including Coastal A Zones.
 - (1) No portion of a building is located within a V Zone.
 - (2) No portion of a building is located within a Coastal A Zone, unless a licensed design professional certifies that the building's foundation is designed in accordance with ASCE 24, Chapter 4.
 - (3) All new construction and substantial improvement of any habitable building (as defined in Article II) located in flood hazard areas shall have the lowest floor, including basement, together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated to or above the local design flood elevation as determined in § 183-12, be in conformance with ASCE 24 Chapter 7, and be confirmed by an elevation certificate.
 - (4) All new construction and substantial improvements of nonresidential structures shall:

- (a) Have the lowest floor, including basement, together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated to or above the local design flood elevation as determined in § 183-12, be in conformance with ASCE 24 Chapter 7, and be confirmed by an elevation certificate; or
- (b) Together with the attendant utility and sanitary facilities, be designed so that below the local design flood elevation, the structure:
 - [1] Meets the requirements of ASCE 24 Chapters 2 and 7; and
 - [2] Is constructed according to the design plans and specifications provided at permit application and signed by a licensed design professional, is certified by that individual in a floodproofing certificate, and is confirmed by an elevation certificate.
- (5) All new construction and substantial improvements with fully enclosed areas below the lowest floor shall be used solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding. Enclosures shall:
 - (a) For habitable structures, be situated at or above the adjoining exterior grade along at least one entire exterior wall, in order to provide positive drainage of the enclosed area in accordance with N.J.A.C. 7:13; enclosures (including crawl spaces and basements) which are below grade on all sides are prohibited;
 - (b) Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters unless the structure is nonresidential and the requirements of § 183-76A(4)(b) are met;
 - (c) Be constructed to meet the requirements of ASCE 24 Chapter 2;
 - (d) Have openings documented on an elevation certificate; and
 - (e) Have documentation that a deed restriction has been obtained for the lot if the enclosure is greater than six feet in height. This deed restriction shall be recorded in the Office of the County Clerk or the Registrar of Deeds and Mortgages in which the building is located, shall conform to the requirements in N.J.A.C. 7:13, and shall be recorded within 90 days of receiving a Flood Hazard Area Control Act permit or prior to the start of any site disturbance (including preconstruction earth movement, removal of vegetation and structures, or construction of the project), whichever is sooner. Deed restrictions must explain and disclose that:
 - [1] The enclosure is likely to be inundated by floodwaters which may result in damage and/or inconvenience;
 - [2] The depth of flooding that the enclosure would experience to the flood hazard area design flood elevation;
 - [3] The deed restriction prohibits habitation of the enclosure and explains that converting the enclosure into a habitable area may subject the property owner to enforcement.

B. Construction and elevation in V Zones and Coastal A Zones.

- (1) All new construction and substantial improvements shall be constructed according to structural designs, plans and specifications conforming with ASCE 24 Chapter 4 which are signed by a

licensed design professional and certified by that individual in a V Zone certificate.

- (2) All new construction and substantial improvement of any habitable building (as defined in Article II) located in coastal high hazard areas shall have the lowest horizontal structural member, together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated to the local design flood elevation as determined in § 183-12, be in conformance with ASCE 24 Chapter 7, and be confirmed by an elevation certificate.
- (3) All new construction and substantial improvements of nonresidential structures shall:
 - (a) Have the lowest horizontal structural member, including basement, together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated to or above the local design flood elevation as determined in § 183-12, be in conformance with ASCE 24 Chapter 7, and be confirmed by an elevation certificate; or
 - (b) Together with the attendant utility and sanitary facilities, be designed so that below the local design flood elevation, the structure:
 - [1] Meets the requirements of ASCE 24 Chapters 4 and 7; and
 - [2] Is constructed according to the design plans and specifications provided at permit application and signed by a licensed design professional, is certified by that individual in a floodproofing certificate, and is confirmed by an elevation certificate.
- (4) All new construction and substantial improvements shall have the space below the lowest floor either free of obstruction or constructed with nonsupporting breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. All breakaway walls shall be constructed according to structural designs, plans and specifications conforming with ASCE 24 Chapter 4, signed by a licensed design professional, and certified by that individual in a breakaway wall certificate.
- (5) All new construction and substantial improvements with fully enclosed areas below the lowest floor shall be used solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding. Enclosures shall:
 - (a) Be situated at or above the adjoining exterior grade along at least one entire exterior wall, in order to provide positive drainage of the enclosed area in accordance with N.J.A.C. 7:13; enclosures (including crawl spaces and basements) which are below grade on all sides are prohibited;
 - (b) Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters unless the structure is nonresidential and the requirements of § 183-76B(3)(b) are met;
 - (c) Be constructed to meet the requirements of ASCE 24 Chapter 4;
 - (d) Have openings documented on an elevation certificate and have breakaway wall construction documented on a breakaway wall certificate unless the requirements of § 183-76B(3)(b) are met for a nonresidential structure; and

- (e) Have documentation that a deed restriction has been obtained for the lot if the enclosure is greater than six feet in height. This deed restriction shall be recorded in the Office of the County Clerk or the Registrar of Deeds and Mortgages in which the building is located, shall conform to the requirements in N.J.A.C. 7:13, and shall be recorded within 90 days of receiving a Flood Hazard Area Control Act permit or prior to the start of any site disturbance (including pre-construction earth movement, removal of vegetation and structures, or construction of the project), whichever is sooner. Deed restrictions must explain and disclose that:
- [1] The enclosure is likely to be inundated by floodwaters which may result in damage and/or inconvenience.
 - [2] The depth of flooding that the enclosure would experience to the flood hazard area design flood elevation;
 - [3] The deed restriction prohibits habitation of the enclosure and explains that converting the enclosure into a habitable area may subject the property owner to enforcement;

§ 183-77. Garages and accessory storage structures.

Garages and accessory storage structures shall be designed and constructed in accordance with the Uniform Construction Code.

§ 183-78. Fences.

Fences in floodways that have the potential to block the passage of floodwater, such as stockade fences and wire mesh fences, shall meet the requirements of § 183-36A of these regulations. Pursuant to N.J.A.C. 7:13, any fence located in a floodway shall have sufficiently large openings so as not to catch debris during a flood and thereby obstruct floodwaters, such as barbed-wire, split-rail, or strand fence. A fence with little or no open area, such as a chain-link, lattice, or picket fence, does not meet this requirement. Foundations for fences greater than six feet in height must conform with the Uniform Construction Code. Fences for pool enclosures having openings not in conformance with this section but in conformance with the Uniform Construction Code to limit climbing require a variance as described in Article VII of this chapter.

§ 183-79. Retaining walls, sidewalks, and driveways.

Retaining walls, sidewalks and driveways that involve placement of fill in floodways shall meet the requirements of § 183-36A of these regulations and N.J.A.C. 7:13.

§ 183-80. Swimming pools.

Swimming pools shall be designed and constructed in accordance with the Uniform Construction Code. Aboveground swimming pools and below-ground swimming pools that involve placement of fill in floodways shall also meet the requirements of § 183-36A of these regulations. Aboveground swimming pools are prohibited in floodways by N.J.A.C. 7:13.

§ 183-81. Roads and watercourse crossings.

- A. For any railroad, roadway, or parking area proposed in a flood hazard area, the travel surface shall be constructed at least one foot above the flood hazard area design elevation in accordance with N.J.A.C. 7:13.

- B. Roads and watercourse crossings that encroach into regulated floodways or riverine waterways with base flood elevations where floodways have not been designated, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, shall meet the requirements of § 183-36A of these regulations.

§ 183-82. Other development in coastal high hazard areas (Zone V) and Coastal A Zones.

In coastal high hazard areas (V Zones) and Coastal A Zones, development activities other than buildings and structures shall be permitted only when also authorized by the appropriate federal, state or local authority; when located outside the footprint of, and not structurally attached to, buildings and structures; and when analyses prepared by a licensed professional engineer demonstrates no harmful diversion of floodwater or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include, but are not limited to:

- A. Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
- B. Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the base flood or otherwise function to avoid obstruction of floodwater; and
- C. On-site filled or mound sewage systems.

§ 183-83. Nonstructural fill in coastal high hazard areas (Zone V) and Coastal A Zones.

In coastal high hazard areas and Coastal A Zones:

- A. Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for landscaping and for drainage purposes under and around buildings.
- B. Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal shall be permitted only when an analysis prepared by a licensed professional engineer demonstrates no harmful diversion of floodwater or wave runup and wave reflection that would increase damage to adjacent buildings and structures.
- C. Sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection where the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.

ARTICLE XVI

Temporary Structures and Temporary Storage**§ 183-84. Temporary structures.**

Temporary structures shall be erected for a period of less than 180 days. Temporary structures shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the base flood. Fully enclosed temporary structures shall have flood openings that are in accordance with ASCE 24 to allow for the automatic entry and exit of flood waters.

§ 183-85. Temporary storage.

Temporary storage includes storage of goods and materials for a period of less than 180 days. Stored materials shall not include hazardous materials.

§ 183-86. Floodway encroachment.

Temporary structures and temporary storage in floodways shall meet the requirements of § 183-36A of these regulations.

ARTICLE XVII
Utility and Miscellaneous Group U

§ 183-87. Utility and Miscellaneous Group U.

In accordance with Section 312 of the International Building Code, Utility and Miscellaneous Group U includes buildings and structures that are accessory in character and miscellaneous structures not classified in any specific occupancy in the Building Code, including, but not limited to, agricultural buildings, aircraft hangars (accessory to a one- or two-family residence), barns, carports, communication equipment structures (gross floor area less than 1,500 square feet), fences more than six feet (1,829 mm) high, grain silos (accessory to a residential occupancy), livestock shelters, private garages, retaining walls, sheds, stables, tanks and towers.

§ 183-88. Flood loads.

Utility and Miscellaneous Group U buildings and structures, including substantial improvement of such buildings and structures, shall be anchored to prevent flotation, collapse or lateral movement resulting from flood loads, including the effects of buoyancy, during conditions up to the local design flood elevation as determined in § 183-12.

§ 183-89. Elevation.

Utility and Miscellaneous Group U buildings and structures, including substantial improvement of such buildings and structures, shall be elevated such that the lowest floor, including basement, is elevated to or above the local design flood elevation as determined in § 183-12 and in accordance with ASCE 24. Utility lines shall be designed and elevated in accordance with N.J.A.C. 7:13.

§ 183-90. Enclosures below base flood elevation.

Fully enclosed areas below the design flood elevation shall be constructed in accordance with § 183-76 and with ASCE 24 for new construction and substantial improvements. Existing enclosures such as a basement or crawl space having a floor that is below grade along all adjoining exterior walls shall be abandoned, filled-in, and/or otherwise modified to conform with the requirements of N.J.A.C. 7:13 when the project has been determined to be a substantial improvement by the Floodplain Administrator.

§ 183-91. Flood-damage-resistant materials.

Flood-damage-resistant materials shall be used below the local design flood elevation determined in § 183-12.

§ 183-92. Protection of mechanical, plumbing, and electrical systems.

- A. Mechanical, plumbing, and electrical systems, equipment and components, heating, ventilation, air-conditioning, plumbing fixtures, duct systems, and other service equipment, shall be elevated to or above the local design flood elevation determined in § 183-12.
- B. Exception: Electrical systems, equipment and components, and heating, ventilating, air-conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment shall be permitted to be located below the local design flood elevation provided that they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the

occurrence of flooding to the local design flood elevation in compliance with the flood-resistant construction requirements of ASCE 24. Electrical wiring systems shall be permitted to be located below the local design flood elevation provided they conform to the provisions of NFPA 70 (National Electric Code).

GAMES OF CHANCE

Chapter 189

GAMES OF CHANCE

[HISTORY: Adopted by Mayor and Council of Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Conduct of Bingo on Sunday
[Adopted 3-12-1974 by Ord. No. 645]

§ 189-1. Certain games of chance permitted; legislative authority.

All games of chance permitted to be held, operated or conducted pursuant to the Bingo Licensing Law as may be found in N.J.S.A. 5:8-24 through 5:8-49, its amendments and supplements thereto, may be held, operated and conducted on the first day of the week commonly known and designated as Sunday, subject to all other provisions, regulations and requirements of the aforesaid Bingo Licensing Law. This article is hereby adopted pursuant to the specific authorization provided for in N.J.S.A. 5:8-31.

ARTICLE II
Conduct of Raffles on Sunday
[Adopted 3-26-1974 by Ord. No. 648]

§ 189-2. Certain games of chance permitted; legislative authority.

All games of chance permitted to be held, operated or conducted pursuant to the State Raffle Licensing Law as may be found in N.J.S.A. 5:8-50 through 5:8-76, its amendments and supplements thereto, may be held, operated and conducted on the first day of the week commonly known and designated as Sunday, subject to all other provisions, regulations and requirements of the aforesaid Raffles Licensing Law. This article is hereby adopted pursuant to the specific authorization provided for in N.J.S.A. 5:8-58.

ARTICLE III

Issuance of Licenses

[Adopted 10-13-2010 by Ord. No. 19-2010]

§ 189-3. Authority of Borough Clerk; report to governing body.

The governing body hereby delegates to, authorizes, and provides the authority to the Borough Clerk to issue bingo licenses and raffle licenses to appropriate organizations as specified in the Bingo Licensing Law and the Raffles Licensing Law,¹²⁷ in appropriate applications in the determination of the Clerk. Such license issuance will be thereafter reported to the Borough governing body.

127.Editor's Note: See N.J.S.A. 5:8-24 et seq. and N.J.S.A. 5:8-50 et seq., respectively.

ATLANTIC HIGHLANDS CODE

Chapter 196

HARBOR USE

[HISTORY: Adopted by Mayor and Council of Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Vehicles and traffic — See Ch. 139.

Parks and recreation areas — See Ch. 249.

ARTICLE I
Rules and Regulations
[Adopted 6-25-1957 by Ord. No. 412]

§ 196-1. One-way thoroughfare designated.

Name of Street	Direction	Location
Simon Lake Drive	Easterly	From entrance to harbor area to south of Administration Building
Simon Lake Drive	Westerly	From entrance to harbor area to north of Administration Building

§ 196-2. Motor vehicle speed.

No person or persons shall operate a motor vehicle upon the filled-in area south of the piers and bulkhead in excess of the speed of 10 miles per hour and shall abide by any and all parking rules and regulations of the Harbor Commission and the Borough of Atlantic Highlands.

§ 196-3. Swimming and diving prohibited.

Swimming, diving or bathing from the piers, bulkheads or boats is prohibited.

§ 196-4. Fishing, crabbing and cleaning of fish restricted. [Amended 6-13-1978 by Ord. No. 726]

Fishing, crabbing or cleaning fish or bait on piers, bulkheads, gangplanks and floats is prohibited except in areas designated by the Harbor Commission.

§ 196-5. Bicycles and motor vehicles prohibited. [Amended 6-13-1978 by Ord. No. 726]

The use of bicycles or motor vehicles of any kind on the piers is prohibited. No person shall operate a motor vehicle on the bulkhead area between the roadway and the piers and dock area.

§ 196-6. Painting signs or marking pier restricted.

The painting of signs and the marking up of piers with paint is prohibited, and no sign shall be placed within the harbor area without first obtaining permission from the Harbor Commission.

§ 196-7. Dumping of waste matter prohibited.

No garbage, oil, sludge, refuse matter, sewage or waste material of any kind shall be thrown, deposited or permitted to fall from any vessel using the harbor into the water or on the piers, docks or shore areas of such harbor, nor shall docks, floats, piers or walks be used as storage space for any gear or equipment. The toilet facilities of any vessel which empty into the water shall not be used while such vessel is in the harbor.

§ 196-8. Speed within breakwater restricted.

No person shall operate a boat within the breakwater in excess of the speed six miles per hour. No person or persons shall operate a boat in a manner which endangers other craft in the harbor or the life or limb or

any person upon such craft.

§ 196-9. Parking places designated. [Amended 6-13-1978 by Ord. No. 726]

No motor vehicle shall be parked on the bulkhead area between the roadway area and the pier and dock area.

§ 196-10. Soliciting and hawking prohibited. [Added 6-13-1978 by Ord. No. 726]

Soliciting or hawking of customers by commercial boat owners, their employees or agents, anywhere in the harbor area or from boats, is prohibited.

§ 196-11. Loudspeakers, bullhorns and similar devices prohibited. [Added 6-13-1978 by Ord. No. 726]

Use of loudspeakers, bullhorns or other devices for the amplification of sound, whether mechanical or otherwise, including the playing of music, anywhere in the harbor area or from boats is prohibited, except as authorized by the Harbor Commission.

§ 196-12. Boat engine operation restricted. [Added 6-13-1978 by Ord. No. 726]

No boat engines shall be started earlier than 10 minutes prior to the time the boat leaves its berth. No boat engine shall be run in a reverse or backing-up motion while the boat is berthed.

§ 196-13. Water use restricted. [Added 6-13-1978 by Ord. No. 726]

All water hoses used in the harbor area or on any boat shall employ an automatic shutoff device so as to eliminate waste of water.

§ 196-14. Sale of fish and other items prohibited. [Added 6-13-1978 by Ord. No. 726]

The sale of fish or other items from motor vehicles in the harbor area is prohibited. The sale of fish from docks is prohibited unless such fish are placed in wood, plastic or similar containers and are sold in compliance with all local, county and state regulations.

§ 196-15. Violations and penalties. [Added 6-13-1978 by Ord. No. 726; amended 2-23-2011 by Ord. No. 03-2011]

Any person or persons violating the terms of this article shall be subject to a penalty as provided in Chapter 1, Article II, General Penalty.

ARTICLE II
Use of Waste Containers
[Adopted 5-10-1995 by Ord. No. 10-95]

§ 196-16. Use of waste disposal containers.

- A. Waste disposal containers and/or dumpsters located within the confines of the Atlantic Highlands Harbor are for the sole use of administrators, employees, lessors, concessionaires, vendors, and patrons of the various businesses located in the Municipal Harbor, and any person or entity authorized by the Harbor Manager, and are to be used solely for the disposal of waste materials generated on-site within the harbor facility. **[Amended 1-25-2012 by Ord. No. 01-2012]**
- B. It shall be a violation of this article for any other person and/or entity to deposit waste in the disposal containers and/or dumpsters provided for the use of the aforementioned harbor users, or for any person and/or entity to bring in and deposit in said waste containers or dumpsters any waste materials generated off-site from the harbor facility or boats using said facility.

§ 196-17. Enforcement.

Enforcement shall be the responsibility of the Borough Police Department. Any police officer or authorized Borough or harbor employee or official, upon witnessing or ascertaining the unauthorized and illegal disposal of any waste materials by any person or entity in violation of this article, shall be authorized and empowered to direct and require the person or entity owning or depositing said waste to immediately remove same. The refusal or failure of said person or entity to promptly remove said waste upon such direction shall constitute a separate offense and violation of this article.

§ 196-18. Violations and penalties. [Amended 2-23-2011 by Ord. No. 03-2011]

Any person, and/or entity shall upon conviction, be subject to a penalty as provided in Chapter 1, Article II, General Penalty. In addition, on any offense the court shall order restitution of any and all costs and expenses incurred for the removal and disposition of the illegally disposed waste.

ARTICLE III
Clean Marina Program
[Adopted 11-28-2007 by Ord. No. 26-2007]

§ 196-19. Findings.

- A. It is obvious that the Atlantic Highlands Harbor has a great interest in the protection of water resources in the Municipal Marina and Sandy Hook Bay. It is therefore important that all visitors to the harbor have a clear understanding of the prudent manner in which the harbor is to be used, in order that high-quality water be maintained.
- B. Protection of coastal waterways is mandated by federal law under certain legislation known as the The Coastal Zone Act Reauthorization Amendments of 1990, which requires states situated on the coastline of this country to develop a plan to decrease the pollution of our waterways as a result of various waterfront activities. The New Jersey Clean Marina Program is a result of federal requirements. The program is operated by the New Jersey Department of Environmental Protection and implemented by the New Jersey Coastal Management Office in conjunction with the New Jersey Marine Services Consortium.
- C. The Clean Marina Program requires that any cooperating facility implement certain practices in order to reduce pollution of the waterways to result in a cleaner environment. Accomplishment of the goals of the program requires promoting conscious understanding of these environmentally sensitive practices and encouraging voluntary compliance by all public users of the harbor facilities. It is advantageous to the Borough of Atlantic Highlands to attain certification from the Clean Marina Program and to be known as being an active participant in the program.
- D. Therefore, the following is hereby adopted for any user of the Atlantic Highlands Municipal Harbor.

§ 196-20. Prohibited activities.

The following activities are hereby prohibited in the Atlantic Highlands Marina:

- A. Boat maintenance. It is prohibited to perform the following work on any boat while it is moored, docked or stored at the Atlantic Highlands Municipal Harbor:
 - (1) Spray painting.
 - (2) Sandblasting.
 - (3) Use of disc sanders without vacuum attachment or any other sander without a vacuum attachment.
 - (4) Welding without a permit issued by the Fire Marshal of Atlantic Highlands.
 - (5) In the event that a boat owner paints the bottom of his or her boat at the Atlantic Highlands Municipal Marina, it is required that a tarp or ground covering be placed on the ground below the boat prior to the commencement of the work. The tarp or ground covering shall be of a sufficient thickness and size to preclude sanding dust, paint scrapings or paint or any other material from coming into contact with or spilling onto the ground. When the work is completed, the tarp or ground covering containing any and all scraping and/or dust or other materials shall be placed in a sealed plastic bag and properly disposed of by placing into a dumpster.

- (6) In the event that the boat owner hires others to provide any maintenance services, the owner or their representative shall be present at all times and shall be responsible for any spillage and/or costs of cleanup, fines and/or legal fees assessed to the harbor as a result of any negligence of any party.
- (7) In the event the boat owner hires a contractor who is registered with and has proof of insurance on file in the Harbor Office, then the boat owner need not be present while the contracted work is being performed.
- (8) In the event that the boat owner hires a contractors who is not registered with or has not provided proof of insurance with the Harbor Office, the boat owner shall be assessed the then current outside contractor's fee which shall be payable prior to the launching or removal of a boat from the harbor.

§ 196-21. Recycling.

It is required that all boat owners who dock, moor or store a boat at the Atlantic Highlands Municipal Marina shall recycle any and all recyclable refuse in the recycling containers provided.

§ 196-22. Cleaning of fish.

- A. It is prohibited to clean fish in the parking lots of the Atlantic Highlands Municipal Marina.
- B. Cleaning of fish is permitted only at the designated fish-cleaning stations provided or upon the vessel or a dock box owned by a slip holder of the Municipal Marina.
- C. Discarding of fish or fish remains in the Municipal Marina dumpsters is prohibited unless properly packaged in adequate plastic trash bags.
- D. Fish remains may only be disposed of in such properly designated facilities as may be provided by the Atlantic Highlands Harbor Commission. No fish remains shall be returned to the harbor waters.

§ 196-23. Fishing and crabbing.

Fishing or crabbing is prohibited in the Municipal Marina except in designated areas.

§ 196-24. Dumping.

The dumping of any debris, construction material or any other prohibited materials is not permitted in the Municipal Marina or in the waters of the Municipal Harbor. Dumping or disposal of the following items are specifically prohibited:

- A. Oil and oil filters;
- B. Antifreeze;
- C. Paint, varnish or any solvents;
- D. Gasoline, kerosene or diesel fuel;
- E. Pesticides or herbicides;
- F. Bilge residue;

- G. Batteries;
- H. Mercury switches; and
- I. Any product, item or fluid which has been determined by the Department of Environmental Protection to be flammable, corrosive or toxic.

§ 196-25. Dogs.

- A. Leashing. Dogs are not permitted in the Municipal Harbor unless on a leash accompanied by the owner, as specified in § 97-13H(1).
- B. Cleanup. Owners are responsible for removal of dog feces, as specified in § 97-13H(2). **[Amended 2-23-2011 by Ord. No. 03-2011]**

§ 196-26. Sewerage.

It is prohibited for any user of the Municipal Marina to dump or flush any sewage into the waters of the Municipal Harbor. It is required that any user of the marina shall use a pump-out station for removal of sewage from any vessel docked, moored or stored in the Municipal Marina.

§ 196-27. Marine loading zones.

While in the Marine Loading Zone, no boat shall be left unattended and/or with its engine running at any time. There shall be a limit of 15 minutes for the loading/unloading of any boat in the areas provided by the Municipal Marina. In the event that a vessel remains beyond the fifteen-minute time limit, the boat owner shall be subject to punishment as herein provided.

§ 196-28. Violations and penalties.

- A. Penalties. The person responsible for the violation of this article, or the boat owner shall be subject to the following penalties:
 - (1) First offense. For a first offense, the penalty shall be a maximum amount of \$500.
 - (2) Second offense. For a second offense, the penalty shall be a maximum fine in the amount of \$1,500.
 - (3) Third offense. For a third or subsequent offense, the penalty shall be a maximum fine in the amount of \$2,500.
- B. The said penalties shall be assessed in the discretion of the Municipal Court Judge, who shall have the authority to provide for the imposition of a term of probation, community service and/or restitution as the manner of the offense(s) require.

ARTICLE IV
Abandoned Vessels
[Adopted 3-25-2009 by Ord. No. 05-2009]

§ 196-29. Registration required.

- A. Every owner or operator of a vessel that moors or docks within the boundaries of the Atlantic Highlands Harbor, or grounds on land, under the control of the Atlantic Highlands Harbor Commission or the Borough of Atlantic Highlands, shall promptly register within 48 hours of said mooring, docking, or grounding with the Harbor Manager or other official designated by the Harbor Manager, the Harbor Commission or the Borough Administrator. **[Amended 1-25-2012 by Ord. No. 01-2012]**
- B. The registration shall include:
- (1) The length of time the vessel is intended to remain at the location;
 - (2) The home address and telephone number of the owner or operator of the vessel;
 - (3) A local address and telephone number where the owner or operator can be contacted.
- C. Nothing in this section shall prevent the operator of a vessel from anchoring, grounding, or mooring a vessel when an emergency exists that requires such action to be taken to safeguard the lives of the passengers, the vessel, or the environment.

§ 196-30. Posting of notices regarding required registration. [Amended 1-25-2012 by Ord. No. 01-2012]

The Harbor Manager or his designee shall post notices in appropriate, conspicuous locations in and around the Harbor and its facilities stating the registration requirement and where the owner or operator of a vessel shall register the required information.

§ 196-31. Notice that vessel will be removed. [Amended 1-25-2012 by Ord. No. 01-2012]

After a vessel has been moored, grounded, or docked without registration for a period of one week, the Harbor Manager or other designee of the Harbor Commission acting for or on behalf of the Harbor Commission or the Borough, may affix a notice on the vessel advising that if the vessel is not removed by the date indicated on the notice, which shall be no less than seven calendar days following the date that the notice is affixed, then the vessel, including any trailer upon which a grounded vessel has been placed, will be removed to a holding area. The Harbor Manager and/or the Borough Administrator shall designate and appropriately mark an appropriate location in the harbor area a holding area for such vessels.

§ 196-32. Interpretation.

A vessel that has been abandoned at a public or private boat dock, pier, or marina is considered abandoned in the harbor or waterfront.

§ 196-33. Power of Harbor Commission.

The Harbor Commission and its designee are hereby vested with the power to raise, recover, tow, remove, store, destroy, and dispose of vessels that have been abandoned in the harbor or waterfront, as appropriate, pursuant to the procedures applicable to municipal waterways in the Abandoned or Sunken Vessels

Disposition Law (N.J.S.A. 12:7C-7 et seq.).

§ 196-34. Liability for damages.

No agent, servant, employee, or authorized representatives of the Harbor Commission or the Borough, or the Harbor Commission or Borough shall be held liable for any damage or loss to any vessel or its contents that is removed to a holding area and stored pursuant to the authority of this article.

§ 196-35. Violations and penalties.

An owner or operator of a vessel who violates the provisions of this article shall be liable to a penalty of not less than \$100 nor more than \$1,250. Each day upon which the violation continues shall constitute a separate offense. The civil penalty imposed pursuant to this section shall be collected pursuant to the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 et seq., in a summary proceeding in the Borough Municipal Court.

§ 196-36. Issuance of summons; disposition of fines. [Amended 1-25-2012 by Ord. No. 01-2012]

The Harbor Manager or his designee, or other designee as appointed by the Harbor Commission or the Borough, or any member of the Borough Police Department, is authorized to issue a summons for a violation of the provisions of this article and may serve and execute all process with respect to its enforcement. A penalty recovered under the provisions of this section shall be recovered by and in the name of the state by the local municipality and shall be paid into the treasury of the Borough of Atlantic Highlands.

ARTICLE V

Mooring or Anchoring**[Adopted 7-24-2013 by Ord. No. 11-2013]****§ 196-37. Unauthorized mooring/anchoring prohibited.**

Other than at an authorized mooring/anchoring location designated by the Harbor Commission within the designated harbor mooring fields and pursuant to a proper authorization/agreement with the Harbor Commission or Harbor Manager for use of a designated mooring space or location, no person or entity without the approval of the Harbor Manager shall:

- A. locate or place within the protected harbor (the area within the harbor breakwater) any privately owned permanent or fixed mooring or helix anchor equipment;
- B. Moor or anchor any boat within the designated mooring fields in the protected harbor;
- C. Moor or anchor any boat within the area of the protected harbor designated as the refuge area for a period of more than 48 hours without complying with the registration requirement of § 196-29.

§ 196-38. Time period for temporary mooring/anchoring; extensions of time.

Any owner or operator of a boat moored or anchored in the harbor in the refuge area or in an area other than a designated mooring space in the harbor mooring fields as authorized by an agreement with the Harbor Commission, and proposing to continue to moor/anchor the boat for more than seven days (the seven days commencing on the date the boat was first moored/anchored within the harbor/refuge area), shall prior to the expiration of the seven days apply to the Harbor Manager for a permit to continue to temporarily anchor/moor the boat in the harbor for a period beyond the seven days permitted. The owner/operator shall supply documentation showing a substantial reason, such as adverse weather conditions, mechanical work underway, etc., supporting a need for an extension of permission to moor/anchor the boat in the harbor/refuge area. The Harbor Manager may in his discretion authorize such permit for a period of such additional time as he deems reasonable for the reasons demonstrated to be resolved and the boat to be removed. If the boat is not removed at the expiration of the seven days or such additional time as extended by permit by the Harbor Manager, the boat and/or the owner/operator of the boat shall be subject to summons and fine for violation of this article. The application fee for each application for a permit or an extension of that permit is \$80.

§ 196-39. Unauthorized mooring/anchoring removed.

Any permanent unauthorized mooring or anchoring equipment placed or located within the protected harbor, and/or any boat that remains moored or anchored within the protected harbor without authorization or authority from the Harbor Commission or Harbor Manager for longer than the permissible seven-day period or such additional time as may be approved by permit from the Harbor Manager, may be removed at the direction and order of the Harbor Manager. The Harbor Manager may provide the notice as provided in § 196-31 in his discretion, but such notice is not required if the Harbor Manager determines that circumstances indicate prompt removal of the boat and/or unauthorized mooring or anchoring equipment is appropriate. Removed mooring/anchoring equipment and boats shall be taken or towed to a holding area or location as determined by the Harbor Manager. The owner and/or operator of the boat shall be responsible for and pay all towing/removal charges and storage costs incurred by the Borough/harbor and/or any contractor or agent engaged by the harbor to remove the equipment/boat. Those charges and costs shall be paid by the owner and/or operator or other responsible party prior to the equipment and/or boat being released by the Borough/harbor. This power and authorization for the Harbor Manager to have the

equipment or boat removed is in addition to the authority to issue summons.

§ 196-40. Violations and penalties.

An owner or operator of a boat who violates the provisions of this article shall be liable to a penalty of not less than \$200 nor more than \$1,250. Each day upon which the violation continues shall constitute a separate offense. The civil penalty imposed pursuant to this section shall be collected pursuant to the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 et seq., in a summary proceeding in the Borough Municipal Court. A penalty recovered under the provisions of this section shall be recovered by and in the name of the state by the Borough of Atlantic Highlands and shall be paid into the treasury of the Borough of Atlantic Highlands.

§ 196-41. Issuance of summons; disposition of fines.

The Harbor Manager or his designee, or other designee as appointed by the Harbor Commission or the Borough, or any member of the Borough Police Department, is authorized to issue a summons for a violation of the provisions of this article and may serve and execute all process with respect to its enforcement.

ATLANTIC HIGHLANDS CODE

Chapter 200

HOUSING STANDARDS

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Certificates of occupancy — See Ch. 128.

Flood damage prevention — See Ch. 183.

Uniform construction codes — See Ch. 136.

Stormwater control — See Ch. 306.

Development regulations — See Ch. 150.

Stormwater management — See Ch. 311.

Fire prevention — See Ch. 178.

ARTICLE I

Unfit Buildings**[Adopted 4-23-1963 by Ord. No. 470]****§ 200-1. Purpose.**

It is hereby found and declared that the existence or occupation of any building or buildings or parts thereof, in the Borough of Atlantic Highlands, which are so old, dilapidated or have become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation, occupancy or use are inimical to the welfare and dangerous and injurious to the health and safety of the people of the Borough of Atlantic Highlands, and that a public necessity exists for the repair, closing or demolition of such building or buildings, or part thereof. It is hereby found that there exist in the Borough of Atlantic Highlands, building or buildings, which are unfit for human habitation or occupancy, or use, due to dilapidation, defects, increasing the hazards of fire, accidents or other calamities, lack of ventilation, lack of sanitary facilities, or due to other conditions rendering such buildings or parts thereof unsafe or unsanitary, or dangerous or detrimental to the safety or otherwise inimical to the welfare of the residents of the Borough of Atlantic Highlands, and as to which the Borough of Atlantic Highlands has the power, pursuant to P.L. 1942, c. 112, as amended by P.L. 1956, c. 197 (N.J.S.A. 40:48-2.3 et seq.), to exercise its police powers to repair, close or demolish, or cause or require the repairing, closing or demolition of such building or buildings, or part thereof, in the manner herein provided.

§ 200-2. Definitions.

The following terms, whenever used or referred to in this article, shall have the following respective meanings for the purpose of this article, unless a different meaning clearly appears from the context:

BUILDING — Shall mean any building or structure, or part thereof, whether used for human habitation or otherwise, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

DWELLING UNIT — Shall mean a building or portion thereof providing living facilities for one or more persons.

OWNER — Shall mean the holder or holders of the title in fee simple.

PARTIES IN INTEREST — Shall mean all individuals, associations and corporations who have interests of record in a building and any who are in actual possession thereof.

PUBLIC AUTHORITY — Shall mean any housing authority or any officer who is in charge of any department or branch of the government of the Borough relating to health, fire, building regulations, or any other activities concerning buildings in the Borough of Atlantic Highlands.

PUBLIC OFFICER — Shall mean the officer who is authorized by this article to exercise the powers prescribed for him.

§ 200-3. Public Officer.

The Public Officer shall be the Building Inspector of the Borough of Atlantic Highlands and he shall exercise the powers prescribed by this article.

§ 200-4. Compensation of Public Officer.

In the event the Borough Council shall hereafter deem it necessary, or advisable to compensate the Public Officer for the duties to be exercised by him, as herein provided, the Borough Council may, in such event,

hereafter fix such compensation by resolution or ordinance.

§ 200-5. Petition; notice; hearing.¹²⁸

Whenever a petition is filed with the Public Officer by a public authority or by at least five residents of the Borough of Atlantic Highlands charging that any building is unfit for human habitation or occupancy or use, or whenever it appears to the Public Officer (on his own motion) that any building is unfit for human habitation or occupancy or use, the Public Officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such building a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Public Officer (or his designated agent) at a place therein fixed, not less than seven days nor more than 30 days after the serving of said complaint and that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed in this complaint, and that the rules of evidence prevailing in the courts shall not be controlling in hearings before the Public Officer.

§ 200-6. Determination of hearing.

If the Public Officer shall determine after such notice and hearing (§ 200-5) that the building under consideration is unfit for human habitation or occupancy or use, he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof and parties in interest an order as follows:

- A. Requiring the repair, alteration or improvement of the said building to be made by the owner, within a reasonable time, which time shall be set forth in order, or at the option of the owner, to vacate or have the said building vacated and closed within the time set forth in the order.
- B. If the building is in such a condition as to make it dangerous to the health and safety of persons on or near the premises and the owner fails to repair, alter or improve said building within the time specified in the order, then the owner shall be required to remove or demolish said building within a reasonable time as specified in said order of removal.

§ 200-7. Failure to comply with state.

If the owner fails to comply with an order to repair, alter or improve, or, at the option of the owner to vacate and close the building, the Public Officer may cause such building to be repaired, altered or improved or to be vacated and closed; provided that the Public Officer shall not incur any expense to repair, alter or improve any building without the approval by resolution of the Borough Council. The Public Officer may cause to be posted on the main entrance of any building so closed a placard with the following words: "This building is unfit for human habitation or occupancy or use; the use of occupation of this building is prohibited and unlawful."

§ 200-8. Removal or demolition.

If the owner fails to comply with an order to remove or demolish such building, the Public Officer may cause such building to be removed or demolished, subject to the approval by resolution of the Borough Council, or may contract for the removal or demolition thereof, subject to the approval of such contract by the Borough Council, after advertisement for and receipt of bids therefor.

¹²⁸Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 200-9. Costs and charges.

The amount of:

- A. The cost of the filing of legal papers, expert witnesses' fees, search fees and advertising charges, incurred in the course of any proceeding taken under this article determined in favor of the Borough.
- B. Such cost of such repairs, alterations or improvements or vacating and closing, or removal and demolition, if any.
- C. The amount of the balance thereof remaining after deduction of the sum, if any realized from the sale of materials derived from such building or from any contract for removal or demolition thereof, shall be a municipal lien against the real property upon which such cost was incurred. If the building is removed or demolished by the Public Officer, he shall sell the materials of such building. There shall be credited against the cost of the removal or demolition thereof the proceeds of any sale of such materials or any sum derived from any contract for the removal or demolition of the building. If there are no such credits or if the sum total of such costs exceeds the total of such credits, a detailed statement of the aforesaid costs and the amount so due shall be filed with the Municipal Tax Assessor or other custodian of the records of tax liens and a copy thereof shall be forthwith forwarded to the owner by registered mail. If the total of credits exceeds such costs, the balance remaining shall be deposited in the Superior Court by the Public Officer, shall be secured in such manner as may be directed by such court, and shall be disbursed according to the order or judgment of the court to the persons found to be entitled thereto by final order or judgment of such court; provided, however, that nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise. Any owner or party in interest may, within 30 days from the date of the filing of the lien certificate, proceed in a summary manner in the Superior Court to contest the reasonableness of the amount or the accuracy of the costs set forth in the municipal lien certificate.¹²⁹

§ 200-10. Standards.

- A. The Public Officer may determine that a building is unfit for human habitation or occupancy or use if he finds that conditions exist in such building which are dangerous or injurious to the health or safety of the occupants of such building, the occupants of neighboring buildings or other residents of the Borough of Atlantic Highlands; such conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair, structural defects, uncleanness.
- B. Without any way limiting the standards and conditions set forth in Subsection A hereinabove and without in any way requiring that any one or all of the conditions hereinafter set forth be found in order to declare a building unfit for human habitation, occupancy or use, the following are additional standards to guide the Public Officer, or his agent, in determining the fitness of a building for human habitation or occupancy or use:
 - (1) Those whose interiors walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle 1/3 of its base.
 - (2) Those which, exclusive of the foundation, show 33% or more of damage, disrepair or

129. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

deterioration of the supporting member or members or 50% of damage, disrepair or deterioration of the nonsupporting enclosing or outside walls or covering.

- (3) Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded or which have insufficient strength to be reasonably safe for the purpose used.
- (4) Those structures and every part thereof which are not maintained in good repair by the owner or agent and fit for human habitation; also where the roof is not maintained so as not to leak and where all rainwater is not properly drained and conveyed therefrom so as not to cause dampness in the wall or ceiling on the interior or exterior.
- (5) Those structures which are not maintained in proper repair so as to give adequate protection from the elements and those structures where the windows and doors do not fit properly and where all exterior wood surfaces are not protected from the elements and decay by painting or other protective covering.
- (6) Those dwelling units which lack the following facilities in good working order:
 - (a) A sink, flush toilet and bathtub or stall shower supplied by a sufficient supply of potable running water and connected to the sanitary sewage-disposal system of the Borough of Atlantic Highlands or to an approved individual sewage-disposal system according to Chapter 199, P.L. 1954, of New Jersey.
- (7) Those which lack permanent, safe and reasonably efficient kitchen facilities within the dwelling unit, including a sink with running water and provisions for a cooking stove.
- (8) Those dwelling units and public hallways which do not have a safe electric-lighting system.
- (9) Those which lack substantially adequate safe heating facilities.
- (10) Those where every habitable room does not contain a window or windows which open directly to the outside air, and the total area of such window or windows is less than 10% of the floor area of such room. Also where the window sash is not glazed and provided with suitable hardware and is not made to open to the extent of not less than 5% of the floor area of such room.
- (11) Those dwelling units not having a separate access either to a hallway or landing stairway leading to the street.
- (12) Those which have parts thereof which are so attached that they may fall and injure members of the public or property.
- (13) Those which are not dilapidated, decayed, unsafe or unsanitary that they are unfit for human habitation or occupancy or use, or by reason of structural deficiencies or of continuous dampness or exposure brought about by neglect or dilapidation are likely to cause sickness or disease, or may reasonably be presumed to result in injury to the health, safety and general welfare of those using the premises.
- (14) Those dwelling units having rooms with less than 400 cubic feet of air space and 50 square feet of floor space for each adult and less than 200 cubic feet of air space and 30 square feet of floor space for each child under the age of 12 years occupying such room. Any room used for sleeping purposes having less than 60 square feet is also deemed uninhabitable.
- (15) Those basement dwelling units having rooms with ceiling height of less than six feet three

inches or whose walls and floors have not been dampproofed and waterproofed by an approved method if in contact with earth.

- (16) Those whose courts, yards or other areas on the premises are not properly drained.
- (17) Those with fences in a dilapidated condition.
- (18) Those which have been damaged by fire, wind or other causes so as to have become dangerous to life, safety or the general health and welfare of the occupants or people of the Borough of Atlantic Highlands.
- (19) Those whose yards, lawns, courtyards, terraces, porches, balconies and accessory buildings are not kept clean and free of rodent and vermin infestation and ratproofed.
- (20) Stores or places of business converted to living purposes must conform to the above standards and all show windows must be replaced by conventional-type home windows which conform to the requirements of Subsection B(1) above.
- (21) Those buildings existing in violation of any provision of any ordinance of the Borough relating to health plumbing codes.

§ 200-11. Service.

Complaints or orders issued by the Public Officer pursuant to this article shall be served upon persons either personally or by registered mail, but if the whereabouts of such persons is unknown and the same cannot be ascertained by the Public Officer in the exercise of reasonable diligence, and the Public Officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two successive weeks in a newspaper printed and published in the Borough of Atlantic Highlands. A copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order shall be duly recorded or lodged for record with the County Clerk of the County of Monmouth.

§ 200-12. Remedies of aggrieved persons.¹³⁰

Any person aggrieved by an order issued by the Public Officer pursuant to this article may, within 30 days after the posting and service of such order, avail himself of such remedies as are set forth in N.J.S.A. 40:48-2.8.

§ 200-13. Additional powers of Public Officer.

The Public Officer is hereby authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this article including the following powers in addition to others herein granted.

- A. To investigate the building conditions in the Borough of Atlantic Highlands in order to determine which buildings therein are unfit for human habitation or occupancy or use.
- B. To administer oaths, affirmations, examine witnesses and receive evidences.
- C. To enter upon premises for the purpose of making examinations; provided that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession.

130.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- D. To appoint and fix the duties of such officers, agents and employees as he determines necessary to carry out the purposes of this article.
- E. To delegate any of his functions and powers under this article to such officers, agents and employees as he may designate, subject to confirmation by the Borough Council.

§ 200-14. Administration.

The Borough Council shall also, as soon as possible after the adoption of this article, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the buildings in the Borough of Atlantic Highlands for the purpose of determining the fitness of such buildings for human habitation or occupancy or use and for the enforcement and administration of this article and may make such appropriations from its revenues as it may deem necessary for this purpose and may accept and apply grants or donations to assist it in carrying out the provisions of this article.

§ 200-15. Violations and penalties.

Any person who shall violate §§ 200-7 and 200-8 of this article or who shall violate an order of the Public Officer, after duly made and promulgated pursuant to this article, or who shall interfere with the Public Officer or any other person authorized to exercise the powers of the Public Officer shall, upon conviction in the Municipal Court, be subject to a fine not exceeding \$200 or be imprisoned in the county jail not exceeding 90 days, or both such fine and imprisonment; and such action in and penalties imposed by the Municipal Court may be in addition to any other action or proceedings provided in this article. Each day that a violation is permitted to exist shall constitute a separate offense.

§ 200-16. Supplemental nature of ordinance.

Nothing in this article shall be construed to abrogate or impair the powers of any department of the Borough of Atlantic Highlands to enforce any provisions of its charter or its ordinances or regulations or to prevent or punish violation thereof.

ARTICLE II

Multiple-Family Dwellings**4-12-1966 by Ord. No. 508; amended in its entirety 2-20-1991 by Ord. No. 989-91****§ 200-17. Powers of Housing Inspector or his designee.**

The Housing Inspector of the Borough of Atlantic Highlands or his designee is hereby designated as the officer to exercise the powers prescribed by this article.

§ 200-18. Adoption of State Housing Code.

Pursuant to the provisions of N.J.S.A. 55:13A-6(e), Chapter 10 of Title 5 of the New Jersey Administrative Code, entitled "Maintenance of hotels and multiple dwellings," is hereby accepted, adopted and established as a standard to be used as a guide in determining whether buildings, or portions thereof, hotels and multiple dwellings as defined in the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-3, and other than rooming houses and boardinghouses, as defined in the Rooming and Boarding House Act of 1979, N.J.S.A. 55:13B-1 et seq., are fit for human habitation, use or occupancy.

§ 200-19. Inspection of property.

The Housing Inspector or his designee is hereby authorized and directed to make inspections to determine the condition of dwelling units, rooming units and premises located within the Borough of Atlantic Highlands in order that he may perform his duty of safeguarding the health and safety of the occupants of dwellings and of the general public. For the purpose of making such inspections, the Housing Inspector or his designee is hereby authorized to enter, examine and survey at all reasonable times all dwellings, dwelling units, rooming units and premises. The owner or occupant of every dwelling, dwelling unit and rooming unit, or the person in charge thereof, shall give the Housing Inspector or his designee free access to such dwelling, dwelling unit or rooming unit and its premises at all reasonable times for the purpose of such inspection, examination and survey. Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part of such dwelling or dwelling unit, or its premises, at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this article or with any lawful rule or regulation adopted or any lawful order issued pursuant to the provisions of this article.

§ 200-20. Violation; notice; hearing.

Whenever the Housing Inspector or his designee determines that there are reasonable grounds to believe that there has been a violation of any provision of this article, or of any rule or regulation adopted pursuant thereto, he shall give notice of such alleged violation to the person or persons responsible therefor as hereinafter provided. Such notice shall:

- A. Be put in writing.
- B. Include a statement of the reasons why it is being issued.
- C. Allow a reasonable time for the performance of any act it requires.
- D. Be served upon the owner or his agent, or the occupant, as the case may require; provided that such notice shall be deemed to be properly served upon such owner or agent, or upon such occupant, if a copy thereof is served upon him personally; or if a copy thereof is sent by certified mail to his last-known address; or if a copy thereof is posted in a conspicuous place in or about the dwelling affected

by the notice; or if he is served with such notice by any other method authorized or required under the laws of this state.

- E. Such notice may contain an outline of remedial action which, if taken, will effect compliance with the provisions of this article and with rules and regulations adopted pursuant thereto.
- F. Any person affected by any notice which has been issued in connection with the enforcement of any provision of this article, or of any rule or regulation adopted pursuant thereto, may request and shall be granted a hearing on the matter before the Building Inspector or his designee, provided such person shall file in the office of the Municipal Clerk a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within 10 days after the day the notice was served. Upon receipt of such petition, the Housing Inspector or his designee shall set a time and place for such hearing and shall give the petitioner written notice thereof. At such hearing, the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The hearing shall be commenced not later than 10 days after the day on which the petition was filed; provided that upon application of the petitioner, the Housing Inspector or his designee may postpone the date of the hearing for a reasonable time beyond such ten-day period, if in his judgment the petitioner has submitted a good and sufficient reason for such postponement. After such hearing, the Housing Inspector or his designee shall sustain, modify or withdraw the notice, depending upon his findings as to whether the provisions of this article and of the rules and regulations adopted pursuant thereto have been complied with. If the Housing Inspector or his designee sustains or modifies such notice, it shall be deemed to be an order. Any notice served pursuant to this article shall automatically become an order if a written petition for a hearing is not filed in the office of the Municipal Clerk within 10 days after such notice is served. The proceedings at such hearing, including the findings and decision of the Housing Inspector or his designee, shall be summarized, reduced to writing and entered as a matter of public record in the office of the Municipal Clerk. Such record shall also include a copy of every notice or order issued in connection with the matter. Any person aggrieved by the decision of the Housing Inspector or his designee may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of the state. Whenever the Housing Inspector or his designee finds that an emergency exists which requires immediate action to protect the public health, or safety, he may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Notwithstanding the other provisions of this article, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but, upon petition to the Housing Inspector or his designee, shall be afforded a hearing as soon as possible. After such hearing, depending upon his findings as to whether the provisions of this article and of the rules and regulations adopted pursuant thereto have been complied with, the Housing Inspector or his designee shall continue such order in effect or modify it or revoke it.

§ 200-21. Rules and regulations.

The Housing Inspector or his designee is hereby authorized and empowered to make and adopt such written rules and regulations as he may deem necessary for the proper enforcement of the provisions of this article; provided, however, that such rules and regulations shall not be in conflict with the provisions of this article nor in anyway alter, amend or supersede any of the provisions thereof. The Housing Inspector or his designee shall file a certified copy of all rules and regulations which he may adopt in his office and in the office of the Clerk of the Borough of Atlantic Highlands.

§ 200-22. Compliance with State Housing Code required.

No person shall occupy as owner-occupant or rent to another for occupancy any building or dwelling unit, for the purpose of living therein, which does not conform to the provisions of the N.J.A.C. 5:10-1.1 et seq., established hereby as the standard to be used in determining whether such building or dwelling unit therein is safe, sanitary and fit for human habitation.

§ 200-23. Violations and penalties.¹³¹

Any person, firm or corporation who shall violate any of the provisions of this article shall upon conviction, be punished by a fine of not less than \$100 and not more than as provided in Chapter 1, Article II, General Penalty; each day the same is violated shall be deemed and taken to be a separate and distinct offense.

§ 200-24. Applicability.

This article shall apply only to multiple-family dwellings containing five or more dwelling units.

§ 200-25. Jurisdiction and authority of Housing Inspector or his designee.

Notwithstanding any provision of this article to the contrary, the Building Inspector or his designee of the Borough of Atlantic Highlands shall have concurrent jurisdiction and authority to perform all the duties and functions of the Housing Inspector or his designee and to implement and enforce the provisions of this article as provided for herein.

131.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

LICENSING

Chapter 211

LICENSING

[HISTORY: Adopted by Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Bed-and-breakfast establishments — See Ch. 150, § 150-46.1.

ARTICLE I

Mercantile Licenses**[Adopted 10-10-2012 by Ord. No. 11-2012¹³²]****§ 211-1. License required; fees; exemptions.**

- A. License required. It shall be unlawful for any person or body corporate to conduct any commercial, retail or mercantile establishment without first having procured a license from the Clerk of the municipality or from such other municipal official as is designated by the Clerk.
- B. Prior to the issuance of any license under this article, the applicant shall be required to pay an annual license fee as provided in Chapter 168, Article II, to cover costs incurred by the Borough in the issuance of the license and any inspections incidental thereto. No fee shall be charged to a nonprofit organization which shall make an application for a license under this article, provided that an appropriate person or officer of the organization shall file with the Municipal Clerk a statement, signed under oath, indicating that the organization applying for said license is, in fact, a duly qualified nonprofit organization under the laws of the State of New Jersey.
- C. Interstate commerce not affected. No provision of this article shall be applied so as to impose any unlawful burden on either interstate commerce or any activity of the Borough, County of Monmouth, State of New Jersey, or the federal government.
- D. No mercantile license will be issued to any retail food establishment as defined in and governed by N.J.A.C. 8:24-1.1 et seq. (Sanitation in Retail Food Establishments and Food and Beverage Vending Machines) without first having procured a license from the local Board of Health or without complying with any or all of the provisions concerning operation and maintenance of the same as contained in the aforementioned N.J.A.C. 8:24-1.1 et seq. (Sanitation in Retail Food Establishments and Food and Beverage Vending Machines).
- E. Exemptions:
 - (1) Home-based businesses or professions as outlined in Chapter 150, Article VI, § 150-45; and
 - (2) Any person or body corporate that is a tenant of the Atlantic Highlands Harbor Commission.

§ 211-2. Violations and penalties.

Any person violating any of the provisions of this article shall be subject to penalties as provided in Chapter 1, Article II, General Penalty.

132.Editor's Note: This ordinance also repealed former Art. I, Food Establishments, adopted 7-14-1931 by Ord. No. 238, as amended.

ARTICLE II

Bed-and-Breakfast Establishments
[Adopted 7-27-2011 by Ord. No. 11-2011]**§ 211-3. Definitions.**

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

BED-AND-BREAKFAST ESTABLISHMENT — Shall also meet the definitions and standards established by any applicable federal, state or local building, fire, health, or safety code. Bed-and-breakfast establishments shall not include establishments providing accommodations that are classified as "R-3 Bed-and-Breakfast Home Stay" or providing long-term accommodations such as a rooming house or boardinghouse as defined by N.J.S.A. 55:13B-3.

COMPLIANCE CODES — All applicable federal, state and local codes regulating bed-and-breakfast establishments including, but not limited to, building, fire, health and safety codes.

OWNER — The title owner of record to property on which a bed-and-breakfast establishment is proposed to be conducted.

PERSON — Any individual, firm, partnership, corporation, limited liability company, voluntary association, incorporated association and any principal or agent thereof.

§ 211-4. License requirement; application.

- A. It shall be unlawful for any person to operate a bed-and-breakfast establishment within the Borough of Atlantic Highlands without first obtaining a license.
- B. Application for license. Any person desiring a license to operate a bed-and-breakfast establishment must be the owner of the property on which said establishment is to be located and shall file with the Municipal Clerk an application containing the following information:
 - (1) Name of applicant.
 - (2) The address of the premises desired for use as a bed-and-breakfast establishment.
 - (3) Statement of compliance with owner occupancy requirements.
 - (4) Information relating to proposed business operations. The applicant shall also provide the following information with the license application: including number of employees, maximum number of occupants, meals to be provided, amenities to be provided and hours of operation.

§ 211-5. Granting of license.

Following the filing of the application, the Code Enforcement Officer shall conduct an inspection of the property and shall issue an approval or rejection of the application. Upon payment of the prescribed fee, the license herewith shall be issued by the Municipal Clerk. The license shall not be transferable from the person to whom issued to any other person. In the event of a change of the owner/operator, of a bed-and-breakfast establishment, a new license shall be applied for and obtained before the new owner/operator may conduct business on the premises.

§ 211-6. Recording and reporting of license.

- A. The guest register shall be available for inspection by authorized Borough officials at all times, only

for the enforcement of compliance with federal, state and local laws.

- B. All licenses shall be issued on forms prepared and approved by the municipality. The license shall be posted in a conspicuous location on the business premises and shall be produced at the request of any official of the Borough.

§ 211-7. License fee.

The license fee shall be as provided in Chapter 168, Article II, and shall be valid for one year from the date of issue. It shall be the licensee's responsibility to renew the license on a timely basis. Any license not renewed within 30 days after expiration will be deemed lapsed and a new application will be required along with the application fee as provided in Chapter 168, Article II, and the satisfaction of all requirements to obtain a license.

§ 211-8. Revocation and suspension of license.

Any license issued hereunder may be suspended or revoked by the Mayor and Council of the Borough of Atlantic Highlands upon conviction for violation of the terms of the license or of any Borough ordinance, state or federal statute or regulation including, but not limited to, violations of compliance codes, misrepresentation or falsification in applying for a license. After a written complaint is filed with the appropriate agency, and upon the determinations thereof, the Mayor and Council must, within 45 days, schedule a hearing and may or may not at that time proceed with an action to revoke or suspend the license.

- A. Temporary suspension. If the violation concerns the health, safety and welfare of the Borough or the guests of the established bed-and-breakfast, a temporary suspension may be issued by the hand delivering of such notice of suspension and by mailing a notice, by certified mail, to the owner, at the address appearing on the application. The temporary suspension notice shall state at a time certain, within 10 days from the date of notice, that the opportunity for a hearing will be given before the Borough Administrator, Municipal Clerk and Code Enforcement Officer, who may continue the suspension of the license until such time, as previously stated, in which the governing body has to convene.
- B. In the event of the failure of a licensee to appear at any of the above-mentioned hearings, the license shall automatically be revoked and the establishment closed.

§ 211-9. Inspections.

Prior to the issuance of any license or annually, prior to renewal, the premises shall be inspected by the appointed Code Enforcement Officer and Fire Marshal to confirm compliance with all federal, state and local regulations and other compliance codes. The license holder shall also permit inspection by an authorized Official of the Borough at any time to insure compliance with the terms of the license, upon 24 hours' notice or, in the case of an emergency, without notice.

§ 211-10. Violations and penalties.

The maximum penalty upon conviction by any person, firm, corporation or entity who shall violate any of the provisions of this article shall be by one or more of the following: imprisonment in the county jail or in a place provided by the municipality for the detention of prisoners, for any term not exceeding 90 days; or by a fine not exceeding \$2,000; or by a period of community service not exceeding 90 days; and each violation of any of the provisions of this article, and each day the same is violated shall be deemed and taken to be a separate and distinct offense.

ATLANTIC HIGHLANDS CODE

Chapter 216

LITTERING

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Property maintenance — See Ch. 265.

Streets and sidewalks — See Ch. 318.

Solid waste — See Ch. 300.

ARTICLE I

General Littering Regulations
[Adopted 9-10-1968 by Ord. No. 548]**§ 216-1. Definitions.**

For the purpose of this article, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

BOROUGH — The Borough of Atlantic Highlands.

GARBAGE — Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

LITTER — Garbage, refuse and rubbish as defined herein, and all other waste material which, if thrown, deposited or stored as herein prohibited, tends to create a danger to public health, safety and welfare.

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

PRIVATE PREMISES — Any dwelling house, building, or other structures designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, ground, walk, driveway, porch, steps or vestibule belonging or appurtenant to such dwelling, house building, or other structure.

PUBLIC PLACE — Any streets, sidewalks, alleys or other public ways and any and all public parks, squares, spaces, grounds and buildings.

PUBLIC STRUCTURE or BUILDING — Any structure or building owned or operated by the federal, county or state government or any governmental agency.

REFUSE — All putrescible solid wastes (except body wastes) including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, dismantled automobiles and parts thereof, scrap metal, junk, machinery, and solid market and industrial wastes.

RUBBISH — Nonputrescible solid wastes, consisting of both combustible and noncombustible wastes, such as papers, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery, building materials and similar materials.

VEHICLE — Every device, in, upon or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks.

§ 216-2. Litter in public places.

No person shall throw or deposit litter in or upon any street, sidewalk¹³³ or other public place within the Borough except in public receptacles or in authorized private receptacles for collection; provided, however, that said public receptacles shall not be used by persons owning or occupying property in the vicinity of said public receptacles for the deposit of domestic, commercial and industrial litter arising from the conduct of said activities.

133.Editor's Note: For additional regulations concerning uses of streets and sidewalks see Ch. 318, Streets and Sidewalks.

§ 216-3. Placement of litter in receptacles.

Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any streets, sidewalk or other public place. No person shall burn in the open any rubbish or garbage, or refuse, including wood, and building debris except by permission of the Chief of the Fire Department. This shall not be construed to prohibit outdoor cooking and the use of normal fuel therefor.

§ 216-4. Sweeping of litter into gutters prohibited.

No person shall sweep into or deposit in any gutter, street or other public place within the Borough, the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises free of litter.

§ 216-5. Merchants to keep sidewalks free of litter.

No person owning or occupying a place of business shall sweep into or deposit in any gutter, street or others owning or occupying places of business within the Borough shall keep the sidewalk in front of their business premises free of litter.

§ 216-6. Throwing litter from vehicles prohibited.

No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place within the Borough.

§ 216-7. Truck loads causing litter.

No person shall drive or move any truck or other vehicle within the Borough unless such vehicle is so constructed or loaded as to prevent any load or contents of litter from being blown or deposited upon any street, alley or other public place.

§ 216-8. Litter in parks.

No person shall throw or deposit litter in any part within the Borough except in public receptacles, and in such a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or to other public places. Where public receptacles are not provided, all such litter shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere.

§ 216-9. Litter in lakes, bays and fountains.

No person shall throw or deposit litter in any fountain, pond, lake, stream, bay or any other body of water in a part or elsewhere within the Borough.

§ 216-10. Throwing or distributing commercial handbills prohibited in public places.

No person shall throw or deposit any commercial or noncommercial handbill in or upon any sidewalk, street or other public place within the Borough. Nor shall any person hand out or distribute or sell any commercial handbill in any public place; provided, however, that it shall not be unlawful on any sidewalk, street or other public place within the Borough for any person to hand out or distribute, without charge to the receiver thereof, any noncommercial handbill to any person willing to accept it.

§ 216-11. Placing commercial and noncommercial handbills on vehicles.

No person shall throw or deposit any commercial or noncommercial handbill in or upon any vehicle; provided, however, that it shall not be unlawful in any public place for a person to hand out or distribute without charge to the receiver thereof, a noncommercial handbill to any occupant of a vehicle who is willing to accept it.

§ 216-12. Depositing commercial and noncommercial handbills on uninhabited or vacant premises.

No person shall throw or deposit any commercial or noncommercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant.

§ 216-13. Distribution of handbills on posted private premises.

No person shall throw, deposit or distribute any commercial or noncommercial handbill upon any private premises if requested by anyone thereon not to do so, or if there is placed on said premises in a conspicuous position near the entrance thereof, a sign bearing the words: "No Peddlers or Agents," "No Advertisement," or any similar notice, indicating in any manner that the occupants of said premises do not desire to be molested or have their right of privacy disturbed, or to have any such handbills left upon such premises.

§ 216-14. Distributing commercial and noncommercial handbills on inhabited private premises.

- A. No person shall throw, deposit or distribute any commercial or noncommercial handbill in or upon private premises which are inhabited, except by handing or transmitting any such handbill directly to the owner, occupant, or other person then present in or upon such private premises; provided, however, that in case of inhabited private premises which are not posted, as provided, in this article, such person, unless requested by anyone upon such premises not to do so, shall have the authority to place or deposit any such handbill in or upon such inhabited private premises, if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or sidewalks, streets or other public places, and except that mailboxes may not be used when so prohibited by federal postal law or regulations.
- B. Exemption for mail and newspapers. The provisions of this section shall not apply to the distribution of mail by the United States, nor to newspapers.

§ 216-15. Dropping litter from aircraft prohibited.

No person in any aircraft shall throw out, drop or deposit with the Borough, any litter, handbill or any other object.

§ 216-16. Posting notices prohibited.

No person shall post or affix any notice, poster or other paper or device, calculated to attract the attention of the public, to any lamp post, public utility pole or shade tree, or upon any public structure or building, except as may be authorized by the owners thereof or required by law.

§ 216-17. Litter on occupied private property.

No person shall throw, deposit or store litter on any occupied, private property within the Borough, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection and removal of same in such manner that same shall not be

unsightly and detrimental to the surrounding neighborhood.

§ 216-18. Owner to maintain premises free of litter.

The owner or person in control of any private property shall at all times maintain the premises free of litter, particularly one or more automobile bodies, frames or chassis, one or more automobiles unable to be self-propelled, or one or more abandoned automobiles; provided, however, that this section shall not prohibit the storage of litter in authorized private, receptacles for collection.

§ 216-19. Litter on vacant lots.

No person shall throw or deposit litter on any open or vacant private property within the Borough whether owned by such person or not.

§ 216-20. Violations and penalties. [Amended 10-24-1989 by Ord. No. 952-89]¹³⁴

Any person violating or failing to comply with any of the provisions of this article shall upon conviction thereof, be subject to a penalty as provided in Chapter 1, Article II, General Penalty. Each violation, or each day a violation is permitted to continue, shall constitute a separate offense.

134.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE II

Litter Control**[Adopted 11-30-2005 by Ord. No. 26-2005]****§ 216-21. Purpose.**

This purpose of this article is to establish requirements to control littering in the Borough of Atlantic Highlands so as to protect public health, safety and welfare, and to prescribe penalties for the failure to comply.

§ 216-22. Definitions.

For the purpose of this article, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

LITTER — Any used or unconsumed substance or waste material which has been discarded, whether made of aluminum, glass, plastic, rubber, paper, or other natural or synthetic material, or any combination thereof, including, but not limited to, any bottle, jar or can, or any top, cap or detachable tab of any bottle, jar or can, any unlighted cigarette, cigar, match or any flaming or glowing material or any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspapers, magazines, glass, metal, plastic or paper containers or other packaging or construction material, but does not include the waste of the primary processes of mining or other extraction processes, logging, sawmilling, farming or manufacturing.

LITTER RECEPTACLE — A container suitable for the depositing of litter.

PERSON — Any individual, corporation, company, partnership, firm, association, or political subdivision of this state subject to municipal jurisdiction.

§ 216-23. Prohibited acts and regulated activities.

- A. It shall be unlawful for any person to throw, drop, discard or otherwise place any litter of any nature upon public or private property other than in a litter receptacle, or having done so, to allow such litter to remain.
- B. Whenever any litter is thrown or discarded or allowed to fall from a vehicle or boat in violation of this article, the operator or owner, or both, of the motor vehicle or boat shall also be deemed to have violated this article.
- C. Recycling Center. **[Added 3-9-2023 by Ord. No. 05-2023]**
 - (1) It shall be unlawful for any person to throw, drop, discard, or otherwise illegally dump or place any litter of any nature within the Borough Recycling Center other than the following preapproved and posted materials in the posted/defined areas:

Preapproved and posted materials

Recyclables: cardboard, newspapers, jars, cans, bottles (glass, plastic #1 and #2, aluminum), tin, steel and bimetal cans

Mixed paper: including catalogs, junk mail, letterhead, magazines, phone books placed in container

Car batteries

Antifreeze

Motor oil

Brush: logs and long branches must be cut into 4 foot sections

Leaves and yard waste: No grass clippings

Pumpkins

Metal Items

Fire extinguishers

Electronic items: including computers, TVs, phones

Flags

Items specifically prohibited from disposal at the recycling yard are:

Plastic bags

Plastic tarps

Styrofoam

Florescent lights

CFL light bulb

Plastic margarine/butter tubs

Baby wipe containers

Paint cans, except those containing completely dried paint

Household trash

Bulk trash

- (2) The use of the Atlantic Highlands Recycling Center facility is limited to the residents of Atlantic Highland. Persons who reside outside the municipality and discard litter of any material at the municipal recycling yard shall be considered to be committing an act of illegal dumping and are subject to the fines set forth in Subsection C(3).
- (3) Penalties. The person responsible for the violation of this Subsection C shall be subject to the following penalties:
 - (a) First offense. For a first offense, the penalty shall be a maximum amount of \$500.
 - (b) Second offense. For a second offense, the penalty shall be a maximum fine in the amount of \$1,500.
 - (c) Third offense. For a third or subsequent offense, the penalty shall be a maximum fine in the amount of \$2,500.

§ 216-24. Enforcement.

The Police Department and/or Code Enforcement Officer of the Borough of Atlantic Highlands shall enforce this article.

§ 216-25. Violations and penalties.¹³⁵

Any person(s) who is found to be in violation of the provisions of this article shall be subject to a penalty as provided in Chapter 1, Article II, General Penalty.

135.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 226**MASSAGE PARLORS**

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 6-26-2002 by Ord. No. 7-2002. Amendments noted where applicable.]

§ 226-1. License required.

- A. License required for massage/bodywork therapy establishment. No person, corporation or business entity shall operate any establishment or any premises in the Borough offering massage therapy, acupressure therapy, reflexology or a bodywork therapy without such business obtaining a massage/bodywork therapy establishment license from the Municipal Clerk in accordance with the terms and provisions of this chapter. Hours of operation shall be limited to 8:00 a.m. to 9:00 p.m.¹³⁶
- B. License required for a therapist. No person shall render or perform services of, or engage in the business of, or be employed as, a massage therapist, bodywork therapist, acupressure therapist, reflexologist, masseur or masseuse (therapist) without obtaining a therapist license from the Municipal Clerk in accordance with the terms and provisions of this chapter. A therapist may only operate at a licensed establishment.

§ 226-2. Application for license.

- A. Each and every application for an establishment license or a therapist license shall provide the Municipal Clerk with satisfactory evidence of:
 - (1) The name and address of the applicant and all residences used in the last three years;
 - (2) Significant details of all employment in the last three years; including but not limited to, business name, address, phone, supervisor, time period, position, conditions of employment and termination;
 - (3) The applicant being 18 years of age or older;
 - (4) Active professional membership in good standing with the Associated Bodywork and Massage Professionals, or American Massage Therapy Association.
- B. Additionally, for applicants desiring an establishment license:
 - (1) A statement as to whether or not the applicant, any person or entity with an ownership interest in the business of 5% or more, or any officer or director thereof, if a corporation, has ever been convicted of a crime in this or any other state and any details thereof;
 - (2) The address of the premises where business will be conducted, a physical description and sketch of the property and facilities, and evidence that the business and use is permitted at that location.
- C. Additionally, for applicants desiring a therapist license:
 - (1) A statement as to whether or not the applicant has ever been convicted of a crime in this or any other state and any details thereof;
 - (2) The address of the licensed establishment where they will work;

136.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (3) Certification by the State of New Jersey under N.J.S.A. 45:11-53 et seq., or subsequent legislation;¹³⁷
- (4) A diploma or certificate of graduation from an approved school or other institution of learning wherein the method, profession and work of a therapist is taught.
 - (a) The term "approved school or other institution of learning" shall mean and include any school or institution of learning that complies with the following criteria:
 - [1] It has been accredited by either The Accrediting Commission of Career Schools and Colleges of Technology or The Commission on Massage Therapy Accreditation; or
 - [2] It has been approved by the New Jersey Department of Education; and
 - [3] It shall require a course of study of not less than 550 hours before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning showing the successful completion of such course of study or learning.
 - (b) Schools offering correspondence courses and not requiring actual class attendance shall not be deemed "approved school." It shall be the responsibility of the applicant to provide the Municipal Clerk with the information substantiating that the applicant meets the above criteria.

D. The Clerk shall have the right to confirm information submitted.

§ 226-3. License fees.¹³⁸

- A. Establishment license. The applicant for an establishment license shall pay an annual license fee as provided in Chapter 168, Article II, renewable on January 1 of each year.
- B. Therapist license. The applicant for a therapist license shall pay an annual license fee as provided in Chapter 168, Article II, renewable on January 1 of each year.

§ 226-4. Approval.

Each application for a license, or the renewal thereof, shall be approved by the Borough Council before any license is issued. The Borough Council shall not approve such application if, on the basis of the past criminal record of the applicant or of the principals thereof, or on the basis of other evidence of bad character or morals, or on the basis that the individual applicant or establishment has violated this or any other Borough ordinance, it shall determine that the granting or renewal of such license would tend to encourage or permit criminal or immoral activities within the Borough.

§ 226-5. Exceptions.

The provisions of this chapter shall not apply to massage, acupuncture or physical therapy treatments, given:

- A. In a regularly established medical center, hospital, or sanitarium having a staff that includes licensed physicians, osteopaths, chiropractors and/or physical therapists.

137.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

138.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- B. By any licensed physician, osteopath, chiropractor or physical therapist.

§ 226-6. Violations and penalties.

- A. Any person, corporation or business violating the provisions of this chapter, shall, upon conviction, be punished by a penalty as provided in Chapter 1, Article II, General Penalty.¹³⁹
- B. Any person, corporation or business violating the provisions of this chapter may, at the discretion of the Borough Council, have their license to operate and perform services suspended and/or revoked. Any violation of an employee, agent or servant shall be deemed a violation by the employer business.

139.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 229**MURALS, PUBLIC**

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 12-18-2019 by Ord. No. 20-2019. Amendments noted where applicable.]

§ 229-1. Findings and purpose.

It is the intent of this chapter to regulate the location, construction and manner of display of murals in the Historic Business District, Light Industrial District and/or the Central Business District in order to preserve the aesthetic appeal of the Borough and to promote appropriate visual expression by defining what constitutes a mural and to provide penalties for violation of the provisions thereof.

§ 229-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the following meanings:

GRAFFITI — Any writing or drawings that have been scribbled, scratched, or painted illicitly on a wall or other public or private surface.

MURAL — A painting or illustration applied directly to a wall of an independent structure within the Borough, but shall not include:

- A. Any such painting or illustration requiring a separate foundation or footing;
- B. Any depiction or contents of a commercial, trademarked, copyrighted or other licensed feature;
- C. Any message or advertisement for any individual, group or entity (whether or not commercial); or
- D. Any subject or material of a scandalous, libelous or indecent nature as determined by contemporary community standards.

SIGN — Any writing (including letter, word, or numeral), pictorial presentation (including illustration or decoration), emblem (including device, symbol, or trademark), flag (including banner or pennant), or any other figure of similar character, that:

- A. Is a structure or any part thereof, or is attached to, painted on, or in any other manner represented on a building or other structure;
- B. Is used to announce, direct attention to, or advertise and is visible from outside a building;
- C. Shall include writing, representation, or other figures of similar character, within a building, only when illuminated and located in a window.

§ 229-3. Where permitted.

Murals shall be permitted only in the Central Business District, Light Industrial District and Historic Business District (CBD, LI or HBD), subject to the restrictions as set forth in § 229-7 of this chapter.

§ 229-4. Permit required.

Any mural that is not the subject of land use approval to be erected, painted or otherwise installed in the Borough shall not be erected, painted or installed without first obtaining a recommendation from the

Atlantic Highlands Design Review Committee and Council approval before a permit from the Municipal Clerk shall be issued. All requirements concerning the establishment, composition and authority of the Design Review Committee are set forth in Chapter 5, Article VI, § 5-26 et seq.

§ 229-5. Permit application and fee.

Application for a permit to erect, paint and/or install a mural within the Borough shall be made on a form provided by the Municipal Clerk or, if no such form has been prepared, by a letter, signed by the property owner and the applicant and filed with the Municipal Clerk, containing or enclosing the following information:

- A. The owner of the property where the installation is to be made.
- B. The street address and tax lot and block number of the property in question.
- C. A description of the subject matter of the mural or other feature, if appropriate.
- D. A full-color sketch or other rendering showing the final appearance of the mural or other installation with a "before" photograph of the proposed location of the mural depicting its current state.
- E. A description of the color scheme of the installation.
- F. A general description of the points from which the installation may be viewed, with particular attention to its visibility to motorists and its proximity to intersections.
- G. An application fee in the amount of \$50.
- H. Such other information as the Design Review Committee may reasonably request.

§ 229-6. Review of mural application.

- A. Prior to installation of a mural, the property owner or tenant (with written permission of the property owner) shall apply to the Municipal Clerk with a copy to the Zoning Officer. The application shall be reviewed for compliance with this chapter.
- B. Upon the filing of an application, the Municipal Clerk shall cause the application to be forwarded to the Design Review Committee for review and consideration.
- C. Upon receipt of the mural application, the Design Review Committee shall schedule a meeting for the purpose of reviewing said application. The Design Review Committee shall advise the applicant, in writing, of the date, time and place of said meeting.
- D. Upon recommendation of the application by the Committee, and containing any restrictions as may be recommended by the Committee, the application shall then be forward to the Mayor and Council for further review and final permit approval.

§ 229-7. Restrictions.

- A. Murals shall not contain words (in any language), symbols or representations that are obscene, offensive, of a political nature or are derogatory.
- B. Murals may not be placed on the primary facade of a commercial structure. Exceptions may be applied for, reviewed by the Committee, and approved when the nature of the business is creative, artistic or some other special circumstance is presented.

- C. Murals may only be placed directly on unimproved concrete, concrete block, brick, or metal facades. If the applicant desires to have a mural constructed off site in movable panels to be installed on said facade, the attachment of said panels must comply with applicable building codes, subject to required permits and inspection; must not cover window or door openings unless properly sealed in compliance with applicable building codes; the attachment devices must not compromise the structural integrity of the surface to which the panels are attached; and said panels must be securely attached to prevent failure due to weather conditions, vandalism or age.
- D. Murals shall be maintained in good repair, free from peeling paint or damage due to age, weather, vandalism or the like. Failure to maintain a mural in good repair may result in notification by the Code Enforcement Officer and, if necessary, appropriate enforcement action by the Borough, including recovery of related expenses for enforcement.

§ 229-8. Issuance of permit; conditions; expiration.

Upon recommendation of the Design Review Committee and final approval by the Mayor and Council, the Borough Clerk shall issue a permit, with a notation of any required conditions imposed. A permit shall expire 180 days after the date of issuance. Any approved project not installed within the 180-day time frame shall be required to reapply and obtain a new permit or return the building surface to its original state prior to the approval of the mural permit, at the property owner's expense. An "after" photograph of the completed mural shall be provided to the Committee for its records and future maintenance reviews.

§ 229-9. Maintenance.

- A. Maintenance of the mural shall be the responsibility of the property owner. However, business owners, artists, sponsors and other interested parties may reach private arrangements regarding maintenance.
- B. All murals shall be maintained by the owner in good condition, free from chips, stains, graffiti, defacing, fading paint and the like. Failure to properly maintain an installation shall subject the property owner to the penalties of this chapter.

§ 229-10. Violations and penalties.

Violation of the provisions of this chapter shall be punishable upon conviction, as provided in Chapter 1, General Provisions, Article II, General Penalty, § 1-15, violations and penalties, of this Code. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

§ 229-11. Applicability of construction and land use regulations.

Nothing in this section shall be interpreted as a waiver, replacement, or substitute for any installation that requires a construction code or land use approval under applicable provisions of any statute, ordinance, rule or regulation.

Chapter 235**NUISANCES, PUBLIC HEALTH**

[HISTORY: Adopted by the Board of Health of the Borough of Atlantic Highlands 1-20-1955.

Amendments noted where applicable.]

§ 235-1. Definitions.

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

ENFORCING OFFICIALS — The Health Officer or other official authorized by the Board of Health to enforce this chapter.

PERSON — An individual, firm, corporation, association, society, partnership and their agents or employees.

§ 235-2. Nuisances defined and prohibited.

A. The following matters, things, conditions or acts and each of them are hereby declared to be a nuisance and injurious to the health of the inhabitants of this municipality:

- (1) Any matter, thing, condition or act which is or may become detrimental or a menace to the health of the inhabitants of this municipality.
- (2) Any matter, thing, condition or act which is or may become an annoyance, or interfere with the comfort or general well-being of the inhabitants of this municipality.
- (3) Pollution, or existence of a condition or conditions which cause or threaten pollution, of any waters in this municipality in such manner as to cause or threaten injury to any of the inhabitants of this municipality either in their health, comfort or property.
- (4) The escape into the open air from any stack, vent, chimney or any entrance to the open air, or from any fire into the open air of such quantities of smoke, fly ash, dust, fumes, vapors, mists or gases as to cause injury, detriment or annoyance to the inhabitants of this municipality or endanger their comfort, repose, health or safety.
- (5) The growth, existence or presence of ragweed on any plot of land, lot, highway, right-of-way or any other public or private place.
- (6) The growth, existence or presence of poison ivy within 20 feet of any property line.
- (7) The existence or presence of any water or other liquid in which mosquito larvae breed or exist.
- (8) The existence or presence of any accumulation of garbage, refuse, manure, of animal or vegetable matter, which may attract flies and to which flies may have access, or in which fly larvae or pupae breed or exist.
- (9) Depositing, accumulating or maintaining any matter or thing which serves as food for insects or rodents and to which they may have access or which serves or constitutes a breeding place or harborage for insects or rodents in or on any land, premises, building or other place.
- (10) The keeping in possession of any goats, sheep, swine, horses, ponies, mules, donkeys, rabbits, chickens, pigeons or other fowl. **[Amended 10-1-1968]**

- B. It shall be unlawful for any person or persons to commit, maintain or allow any nuisance, as declared and described in this section.

§ 235-3. Heating of apartments.

It shall be unlawful for the owner or owners who have agreed to supply heat to any building designed to be occupied or occupied as a residence by more than two families to fail to supply heat from the first day of October in each year to the first day of May of the succeeding year in such manner that the temperature of said building where one or more persons reside shall always be kept at 68° F. or above between the hours of 6:00 a.m. and 10:00 p.m.

§ 235-4. Certain noises or sounds prohibited.

It shall be unlawful for any person to make, cause or suffer or permit to be made or caused upon any premises owned, occupied or controlled by him or it, or upon any public street, alley or thoroughfare in this municipality, any unnecessary noises or sounds by means of the human voice, or by any other means or methods which are physically annoying to persons, or which are so harsh, or so prolonged or unnatural, or unusual in their use, time and place as to occasion physical discomfort, or which are injurious to the lives, health, peace and comfort of the inhabitants of this municipality or any member thereof.

§ 235-5. Prohibited lease or rental of certain buildings.

It shall be unlawful for any person to rent, lease or otherwise permit the occupancy of any building as a residence, or for any person to reside in any building as its owner which:

- A. Is not adequately and properly ventilated.
- B. Fails to provide potable water at sufficient pressure and quantity for each family unit from a public supply approved by the State Department of Health and Senior Services or a private supply approved by the Enforcing Official.
- C. Does not have plumbing fixtures consisting of a kitchen sink, bathtub or shower, lavatory and flush toilet connected to the potable water supply.
- D. Does not have facilities for the discharge of all household liquid wastes into a public sewer system approved by the State Department of Health and Senior Services, or into a private sewer approved by the Enforcing Official.

§ 235-6. Spitting prohibited.

It shall be unlawful for any person to spit upon any public sidewalk or upon any part of the interior or exterior of any public building or public conveyance.

§ 235-7. Inspection of premises.

- A. All places and premises in this municipality shall be subject to inspection by the Board of Health or the Enforcing Official if the Board or that official has reason to believe that any section of this chapter is being violated.
- B. It shall be unlawful for any person to hinder, obstruct, delay, resist or prevent the Board of Health or the Enforcing Official from having full access to any place or premises upon which a violation of this chapter is believed to exist.

§ 235-8. Notice of violations; failure to comply.

- A. Whenever a nuisance, as declared by § 235-2 of this chapter, is found on any plot of land, lot, right-of-way or any other private premises or place, notice in writing shall be given to the owner thereof to remove or abate the same within such time as shall be specified therein, but not less than five days from the date of service thereof. A duplicate of the notice shall be left with one or more of the tenants or occupants of the premises or place. If the owner resides out of the state or cannot be so notified speedily, such notice shall be left at that place or premises with the tenant or occupant thereof, or posted on the premises, and such action shall be considered proper notification to the owner, tenant or occupant thereof.
- B. Whenever a nuisance, as declared by § 235-2 of this chapter, is found on any public property or on any highway or any other public premises or place, notice in writing shall be given to the person in charge thereof to remove or abate the same within such time as shall be specified therein. If such person fails to comply with such notice within the time specified therein, the Board of Health may remove or abate such nuisance in the manner as hereinafter provided in the case of a like condition existing on a private premises or place.
- C. If the owner, tenant or occupant, upon being notified as provided by this section, shall not comply with such notice within the time specified therein and fails to remove or abate such nuisance, the Board of Health shall proceed to abate the nuisance or may cause it to be removed or abated in a summary manner by such means as said Board shall deem proper.

§ 235-9. Recovery of costs by Board of Health.

The Board of Health may institute an action at law to recover costs incurred by it in the removal or abatement of any nuisance as declared by § 235-2 of this chapter from any person who shall have caused or allowed such nuisance to exist, or from any owner, tenant or occupant of premises who, after notice and notification, as herein provided, shall fail to remove and abate the same within the time specified in such notice.

§ 235-10. Enforcement.

The provisions of this chapter shall be enforced by the Borough of Atlantic Highlands Board of Health or its Enforcing Official.

ATLANTIC HIGHLANDS CODE

Chapter 249

PARKS AND RECREATION AREAS

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Harbor use — See Ch. 196.

ARTICLE I

General Park Rules**[Adopted 5-22-1979 by Ord. No. 748]****§ 249-1. Adoption of rules and regulations.**

The rules and regulations set forth in this article for the government, use, maintenance and policing of the parks located within the municipal boundaries of the Borough of Atlantic Highlands shall be observed by all persons using same.

§ 249-2. Prohibited acts.

The following acts are prohibited:

- A. Cutting, defacing, injuring, removing or disturbing any tree, shrub, building, fence, bench or other structure, apparatus or property; or picking, cutting or removing any shrub, bush or flower or mark; or writing upon any building, fence, bench or other park structure.
- B. The use of abusive or profane language.
- C. The possession or use of firearms or the throwing of stones or other missiles.
- D. The consuming, possessing or presence while under the influence of any illegal drugs in the park.
- E. Hunting or trapping.
- F. Gambling or betting.
- G. Dumping or littering.
- H. Any other activity constituting a disorderly persons offense under N.J.S.A. 2C:1-4.¹⁴⁰
- I. Any fires.
- J. Horseback riding.
- K. Consumption or possession of beer, wine, liquor or other intoxicating substances within any park.
- L. Posting of bills.
- M. Distribution of circulars, cards or written matter or posting or affixing any placard, notice or sign.
- N. Motorized vehicle.
- O. Bicycle riding.

§ 249-3. Regulated activities.

The following activities in parks are regulated:

- A. All animals must be leashed.
- B. The soliciting, selling or offering for sale of any goods is permitted only by special permit which may

140. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

be obtained from the Municipal Clerk.

- C. Baseball, softball and other sporting activities are only permitted in park areas specifically marked and designated by the Borough. Baseball and softball shall only be permitted in the Center Avenue Park.
- D. Participation in a public assembly is prohibited except by special permit obtained from the Municipal Clerk.
- E. Entertainment or exhibitions are permitted only by written permit obtainable from the Municipal Clerk.
- F. Except by special declaration of the Borough Council, all parks and recreation areas shall close 1/2 hour after sundown as defined by the United States Weather Bureau for the Atlantic Highlands area. All parks shall open at 9:00 a.m.
- G. Where posted and where nets and courts are provided, basketball may be played in those areas.

§ 249-4. Violations and penalties. [Amended 2-23-2011 by Ord. No. 03-2011]

Any person who violates any provisions of this article shall, upon conviction thereof, be punished by a penalty as provided in Chapter 1, Article II, General Penalty.

ARTICLE II
Harbor Skate Park
[Adopted 8-13-2008 by Ord. No. 11-2008]

§ 249-5. Short title.

Harbor Skate Park.

§ 249-6. Hours/times and conditions of operation.

- A. The skate park is open from 8:00 a.m. until dusk. No trespassing when park is closed.
- B. The park will be closed during wet, snow or icy conditions or during park maintenance periods.
- C. The Borough reserves the right to close the skate park or modify its hours of operation for any reason at the direction and discretion of the Borough Administrator, Harbor Manager or his/her designee.
[Amended 1-25-2012 by Ord. No. 01-2012]

§ 249-7. Park supervision and personal liability.

- A. All persons entering the skate park are deemed to have knowledge that the skate park is a nonsupervised activity site designed for skateboarding and in-line skating only, and that all use of the skate park is at the risk of the user.
- B. All persons entering the skate park are deemed to have agreed to indemnify, defend, and hold harmless the Borough of Atlantic Highlands and the Atlantic Highlands Harbor Commission, its officers, employees, agents, and volunteers for, from and against any accident, injury, including death, and/or loss of property or damage thereto sustained as a result of using the skate park.

§ 249-8. Skate park rules.

- A. All participants must skate with due care and circumspection as to avoid accidents or collisions with other skaters and use the equipment in the proper manner. No reckless or dangerous skating permitted. Reckless or dangerous skaters will be required to leave the skating area and the premises immediately.
- B. Helmets, kneepads, elbow pads, appropriate closed toe footwear and wrist guards are required for skaters within the park.
- C. Participants 10 and under must have a responsible adult present.
- D. All bicycles; scooters; motorized vehicles of any kind; and skateboards with wheelbases longer than 20 inches are prohibited.
- E. Personal ramps, rails, boxes, other apparatus or modifications to the skate surface are prohibited.
- F. Food, beverages or glass containers are not allowed inside the skate park.
- G. Spectators and pets are prohibited inside the skate park.
- H. All skaters are to act in an orderly, safe and considerate manner while on the premises and in the skating area.

- I. Smoking and the use of tobacco products, drugs, alcohol, profanity or abusive language is strictly prohibited and shall result in automatic and/or permanent expulsion from this facility.
- J. Vandalism, graffiti and the placement of unauthorized stickers is strictly prohibited. Any violation of this provision shall result in automatic and/or permanent expulsion from the facility and the violator shall be subject to all costs incurred to clean, repair and/or replace damaged equipment.
- K. Use of radios, stereos or any type of amplified sound is prohibited in the skate park. Wearing headphones while in the skating area is prohibited.
- L. Each user of the skate park should have personal identification that includes name, address, and telephone number in his/her possession at all times during use of the skate park.

§ 249-9. Enforcement.

- A. This article shall be enforced by the Atlantic Highlands Harbor Security and/or the Police Department of the Borough of Atlantic Highlands.
- B. Notice of these rules shall be placed at the main entrance into the skating area.

§ 249-10. Violations and penalties.

Any person(s) who is found to be in violation of the provisions of this article shall be subject to expulsion from this facility, a fine not to exceed \$300, community service and/or revocation of any privileges for its use.

Chapter 254**PEDDLING AND SOLICITING**

[HISTORY: Adopted by Mayor and Council of Borough of Atlantic Highlands 8-27-1974 by Ord. No. 656. Amendments noted where applicable.]

GENERAL REFERENCES

Licensing — See Ch. 211.

§ 254-1. Compliance with conditions required.

It shall be unlawful for peddlers, solicitors or canvassers, as herein defined, to conduct their business or in any way solicit except under the conditions as provided in this chapter.

§ 254-2. Definitions. [Amended 9-22-2022 by Ord. No. 11-2022]

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

CANVASSER or SOLICITOR — Any person who goes from house to house selling or taking orders or offering to sell or take orders for goods, wares, merchandise or any article for future delivery, or for services to be performed in the future or for the making, manufacture or repair of any article or thing whatsoever, for future delivery, offering to purchase real property or for the solicitation of money for any purpose whatsoever.

DISTRIBUTOR OF RELIGIOUS MATERIAL — Any person distributing, without charge, printed material espousing, explaining or advocating an organized and recognized religion. Notwithstanding any provision hereof to the contrary, such person shall not be restricted or curtailed by the provisions contained herein, except as provided herein regulating the hours of such distribution shall apply.

PEDDLER — Any person commonly referred to as a peddler or hawker, who goes from house to house and carries with him goods, wares and merchandise for the purpose of selling and delivering them to a consumer and consumers, but shall not include the distribution of religious material without charge.

§ 254-3. License required.

No peddler, solicitor or canvasser shall sell or dispose of, or offer to sell or dispose of, or solicit for any wares, goods, merchandise or services within the Borough of Atlantic Highlands, without first having obtained a license therefor in accordance with the provisions of this chapter and without having paid the license fee as hereinafter prescribed, which license shall expire on December 31 of the year of issuance.

§ 254-4. Application requirements. [Amended 8-25-1981 by Ord. No. 785]¹⁴¹

Any person applying for a license under this chapter shall file with the Police Department of the Borough of Atlantic Highlands, on forms to be provided by him, an application for such license, together with the license fee as provided in Chapter 168, Article II, which fee shall be returned if such license is rejected, except in those cases of applications made to peddle, solicit or canvass solely on behalf of and

141.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

for the benefit of any recognized nonprofit religious, charitable, education, civic or political organization; provided further that no license shall be required for any boy scout or girl scout, or any member of the Red Cross, the American Cancer Society and/or the Monmouth-Ocean County Cerebral Palsy Society who shall peddle, solicit or canvass on behalf of his organization while wearing his official uniform, or for local volunteer firemen or first-aid volunteers in the Borough of Atlantic Highlands while wearing clothing of suitable identification; nor shall any license be required for service clubs or educational groups established in and operating for the benefit of the general residents of the Borough of Atlantic Highlands with identification from said service clubs or educational groups. Any person desiring a license as a peddler or canvasser shall furnish the following information on forms to be supplied by the Police Department:

- A. Name of applicant.
- B. Permanent home address of applicant.
- C. Name and address of firm or organization represented.
- D. Length of time license desired.
- E. Description of wares, literature or matter to be distributed or offered for sale.
- F. Photograph of applicant taken within a period of one year preceding the application and not more than two inches square in size.
- G. Letter from the firm or organization for which applicant purports to work, authorizing applicant to act as its representative.

§ 254-5. Processing of application; issuance of license.

- A. Following the filing of any application for a license under the provisions of this chapter, the Police Department of the Borough of Atlantic Highlands shall conduct an investigation to ascertain the truth of the statements made by the applicant upon his application. If, upon completion of such investigation, it appears that the statements made upon the application are true, that if the applicant is a peddler, solicitor or canvasser and has not been convicted of any crime or misdemeanor involving moral turpitude and if the applicant has not been convicted of a prior violation of this chapter, the Police Department shall thereafter proceed to issue the license for which the application was made.
- B. No permit under this chapter shall be issued until the Borough Clerk receives a certification from the Tax Collector that all taxes, assessments water rents and other duly assessed charges on any property located within the Borough in which the applicant or its principals have an ownership interest are current and that no such taxes or assessments are then due and owing. [Added 9-22-2022 by Ord. No. 11-2022]

§ 254-6. Display of license.

Every person holding a license under the provisions of this chapter shall display the same as follows: Any person holding a license authorized by this chapter shall be required to carry said license with him at all times; and in door-to-door canvassing or soliciting, he must hand the license to the person being solicited or canvassed for inspection at the time said license holder first approaches the individual.

§ 254-7. Conditions. [Amended 9-22-2022 by Ord. No. 11-2022]

- A. It shall be unlawful for any canvasser, peddler or solicitor to:

- (1) Peddle, solicit, canvass at any time except between the hours of 9:00 a.m. and 6:00 p.m., Mondays through Saturdays.
 - (2) Enter in or upon any house, building or other structure or any land or property, without the prior consent of the owner or occupant thereof where there is placed or posted, on the premises in a conspicuous position at or near the usual means of ingress, a sign or other form of notice stating or indicating that the owner or occupant thereof forbids or otherwise does not desire persons engaged in canvassing or soliciting activities to enter upon the premises.
 - (3) Fail to immediately and peacefully depart from the premises when requested to do so by the owner or occupant.
 - (4) To fail to give a written receipt to the purchaser, which receipt shall be signed by the holder and shall set forth a brief description of the articles ordered, the total purchase price thereof, and the amount of the payment, if any, received by the holder from the purchaser.
 - (5) Enter in or upon any house, building or other structure or any land or property registered on the Borough's No-Knock List.
- B. No distributor of religious material shall distribute any such material except between the hours of 9:00 a.m. and 6:00 p.m., Mondays through Saturdays.

§ 254-8. Violations and penalties.¹⁴²

Any person, firm or corporation violating any of the provisions of this chapter shall, upon conviction thereof, be punishable by a penalty as provided in Chapter 1, Article II, General Penalty; and in addition thereto, the Mayor and Council may revoke any license granted hereunder or may suspend any license granted hereunder, after a reasonable opportunity for the licensee to be heard, for any violation of the provisions of this or any other ordinance of the Borough of Atlantic Highlands which may affect the operation of the licensee's business. In connection with the violation of this chapter, each day such violation shall be continued shall be deemed and taken to be a separate and distinct offense and violation thereof.

§ 254-9. Enforcement. [Added 9-22-2022 by Ord. No. 11-2022]

All duly appointed police officers, the Code Enforcement Officer, or his duly authorized representatives, are hereby appointed inspectors of permits and are hereby authorized to examine all persons to ascertain whether or not such person possesses a proper permit. Inspectors have the power to cause complaints to be filed against all persons violating any of the provisions of this chapter.

§ 254-10. No-Knock List. [Added 9-22-2022 by Ord. No. 11-2022]

- A. All residents of the Borough may register their name, address and/or unit/apartment number with the Borough Clerk to be placed on the No-Knock List, indicating that they do not want canvassers, peddlers, solicitors or hawkers of any sort to approach their homes and/or seek personal contact with the occupants of the registered home. The Borough Clerk shall provide the registration form, which shall be available during normal business hours.
- B. Residents shall remain on the No-Knock List until such time as they advise the Borough Clerk, in writing, that they wish to be removed from the list.

142.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- C. The Borough Clerk shall maintain a No-Knock List a copy of which shall be provided to all persons or organizations required to obtain a license or register pursuant to Chapter 254 of the Borough Code. In accordance with the provisions of N.J.S.A. 47:1A-5, the Borough Clerk shall charge a fee for a copy of the No-Knock List. The list shall be updated periodically.
- D. It shall be unlawful for any peddler, hawker, solicitor or canvasser to approach and/or seek personal contact with the occupants thereof if that residence is registered on the No-Knock List. Anyone violating this subsection shall be subject to a fine of not less than \$50 nor more than \$100 for each violation.
- E. Upon completion of registration on the No-Knock List the subscriber shall purchase and receive, for a nominal fee, a decal stating "DO NOT KNOCK; Registered on the NoKnock List with Borough Clerk's office; VIOLATORS WILL BE PROSECUTED" which must be displayed in a clearly visible location (i.e., front door or window adjacent to the front door).

ATLANTIC HIGHLANDS CODE

Chapter 260

(RESERVED)

[Former Ch. 260, Plastic Bags and Straws, Single-Use, adopted 7-10-2019 by Ord. No. 08-2019, as amended, was repealed 5-12-2022 by Ord. No. 06-2022.]

PROPERTY MAINTENANCE

Chapter 265

PROPERTY MAINTENANCE

[HISTORY: Adopted by Mayor and Council of Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Certificates of occupancy — See Ch. 128.

Fire prevention — See Ch. 178.

Development regulations — See Ch. 150.

Housing standards — See Ch. 200.

ARTICLE I

Visibility at Intersections

[Adopted 9-11-1951 by Ord. No. 365]

§ 265-1. Brush, hedges, etc., requirements. [Amended 2-23-2011 by Ord. No. 03-2011]

The owner or tenant of lands lying within the Borough of Atlantic Highlands shall keep all brush, hedges and other plant life growing within 10 feet of any roadway, cut to a height of not more than 2 1/2 feet, where it shall be necessary and expedient for the preservation of the public safety, within 10 days after notice to cut the same.

§ 265-2. Failure to comply.

In the event the owner or tenant shall refuse or neglect to cut the same within 10 days after notice to said owner or tenant, said brush, hedges and other plant life may be cut under the direction of the Street Department of the Borough of Atlantic Highlands.

§ 265-3. Cost of cutting charged to owner.

The cost of cutting the said brush, hedges and other plant life by the Street Department of the Borough of Atlantic Highlands shall be certified by said Department to the Mayor and Council and after examination said cost shall be charged against said lands and shall become a lien upon such lands and be added to and become and form part of the taxes next to be assessed and levied upon such lands and shall bear interest at the rate of other taxes, and collected and enforced in the same manner.

§ 265-4. Violations and penalties. [Amended 2-23-2011 by Ord. No. 03-2011]

Any person or persons violating the terms of this article, upon conviction thereof, shall be subject to a penalty as provided in Chapter 1, Article II, General Penalty.

ARTICLE II

Removal of Brush and Debris
[Adopted 7-27-1965 by Ord. No. 499]

§ 265-5. Removal of brush, weeds, etc., from lands required.

All owners of untenanted land and all tenants or occupiers of land lying within the limits of the Borough of Atlantic Highlands shall remove from such lands brush, weeds, dead and dying trees, stumps, roots, obnoxious growths, filth, garbage, trash and debris, within 20 days after notice to remove the same.

§ 265-6. Failure to comply.

In the event that the owner of untenanted land shall have refused or neglected to remove the brush, weeds, dead and dying trees, stumps, roots, obnoxious growths, filth, garbage, trash and debris within 20 days after notice aforesaid, under the direction of the Mayor and Council, then and in that event, the Mayor and Council may provide for the removal from such lands any brush, weeds, dead and dying trees, stumps, roots, obnoxious growths, filth, garbage, trash and debris, and the cost thereof shall be charged against the lands and the amount so charged shall forthwith become a lien upon such lands and shall be added to and become a part of the taxes next to be assessed and levied upon such lands and the same to bear interest at the same rate as taxes, and to be collected and enforced by the same officers and in the same manner as taxes.

§ 265-7. Violations and penalties. [Amended 2-23-2011 by Ord. No. 03-2011]

Any person who shall violate the terms of this article, or who shall refuse or neglect to remove from such lands brush, weeds, dead and dying trees, stumps, roots, obnoxious growths, filth, garbage, trash and debris within the time herein provided shall, upon conviction thereof, be subject to a penalty as provided in Chapter 1, Article II, General Penalty.

ARTICLE III

Invasive Plants Prohibited; Containment and Removal
[Adopted 7-11-2018 by Ord. No. 08-2018]**§ 265-8. Purpose.**

The purpose of this article is to protect and promote the public health through the control of the growth of invasive plant species. Failure to control the spread of such invasive plants beyond the boundaries of a resident's property is a violation of this article.

§ 265-9. Definitions.

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

ENFORCING OFFICER — The Borough Code Enforcement Officer or his or her designee.

INVASIVE PLANTS — All native and non-native vines and vegetation that grow out of place and are competitive, persistent and pernicious. These plants may damage trees, vegetation, other plant materials or structures. Examples include but are not limited to Japanese knotweed (*Polygonum cuspidatum*), running (monopodial) bamboo, clumping (sympodial) bamboo, multiflora rose, Kudzu vine and poison ivy and oak.

§ 265-10. Control of growth.

All persons must control the growth of invasive plants. Failure to control the spread of such vegetation beyond the boundaries of a resident's property is a violation of this article.

§ 265-11. Inspections.

All places and premises in the Borough of the Atlantic Highlands shall be subject to inspection by the enforcing officer. Such inspections shall be performed by such person, persons or agency duly authorized and appointed by the Borough of Atlantic Highlands. Such inspection shall be made if that official has reason to believe that any section of this article is being violated.

§ 265-12. Removal.

In the event invasive plants are present on the date of adoption of this article and a complaint is received by the Borough regarding an encroachment of any invasive plant, and the Code Enforcement Officer, after observation and/or inspection, determines that there is an encroachment or invasion on any adjoining/ neighboring private or public property or public right-of-way (hereinafter "the affected property"), the Borough shall serve notice to the invasive plant property owner in writing that the invasive plant has invaded other private or public properties or public rights-of-way and demand the removal of the invasive plant from the affected property and demand approved confinement against future encroachment or, in the alternative, the total removal from the property owner's property. Notice shall be provided to the invasive plant property owner, as well as to the owner of the affected property, by certified, return receipt requested mail and regular mail. Within 30 days of receipt of such notice, the invasive plant property owner shall submit to the Code Enforcement Officer of the Borough, with a copy to the owner of the affected property, a plan for the removal of the invasive plant from the affected property, which plan shall include restoration of the affected property after removal. Within 90 days of receipt of the Code Enforcement Officer's approval of the plan of removal and restoration, the removal and restoration shall be completed to the satisfaction of the Code Enforcement Officer.

§ 265-13. Violations and penalties.

- A. Whenever an invasive plant, as defined by this article, is found on any plot of land, lot or any other premises or place, and is found to lack appropriate physical barriers to prevent the spread of growth of the species, or is found to have spread beyond the boundaries of a property, a violation shall be given to the owner of the property from which the invasive species has spread, in writing, directing the property owner to submit a plan to the Code Enforcement Officer to remove or abate the same within 30 days, pursuant to § 265-12. The cost of all remedies, including the removal of plantings of invasive plants, shall be borne by the property owner. In the event more time is needed for treatment and/or removal, approval of the Code Enforcement Officer, or his or her designee, is required.
- B. Any person violating the provisions of this article shall, upon conviction, be punishable by a fine of not more than \$2,000 or community service as determined by the Municipal Court. In addition, the Code Enforcement Officer may request, and the Municipal Court may grant, a specific performance remedy.
- C. The continuation of such violation for each successive day shall constitute a separate offense, and the person or persons allowing or permitting the continuation of such violation may be punished as provided above for each separate offense.
- D. Notwithstanding any other penalty or fine which may be imposed under this article, if an owner fails to comply with the removal or abatement of an invasive plant, the Borough may thereafter remove or otherwise abate the planting and thereafter recover the costs of such removal or abatement from the property owner by placing a lien against the property.
- E. Nothing herein shall be interpreted as limiting the rights of a private property owner to seek civil relief through a court of proper jurisdiction, nor the institution of civil proceedings against the proper parties.

§ 265-14. Planting of invasive plants prohibited.

All new in-ground planting of invasive plants are strictly prohibited. All existing planting must be contained by appropriate physical barriers to prevent the growth or spreading of the existing invasive species beyond the boundaries of a resident's property.

Chapter 272**RENTAL PROPERTY REGISTRATION**

[HISTORY: Adopted by the Board of Health of the Borough of Atlantic Highlands 8-13-1963 by Ord. No. 473; amended in its entirety 8-9-1977 by Article I of Ord. No. 704. Amendments noted where applicable.]

GENERAL REFERENCES

Rent control — See Ch. 277.

§ 272-1. Registration of certain dwellings by owner; information required.

The owners and management of every building and structure in the Borough of Atlantic Highlands which is occupied by two or more families as tenants of the owner or lessor shall register as herein provided. Such registration shall be with the Clerk of the Borough upon forms prescribed by and furnished by the Borough. The form shall include the name and address of the owner; the name and address of the lessor, if other than the owner; and the name and address of an agent in charge of the premises residing in the Borough. The registration shall set forth the location of the building or structure within the Borough and the location of the units occupied by the tenant, with a statement of the number of rooms comprising the rented or leased unit together with the facilities and utilities available.

§ 272-1.1. Residential landlord identity registration form. [Added 10-10-2012 by Ord. No. 11-2012]

- A. Pursuant to N.J.S.A. 46:8-28 and 46:8-29, every landlord shall, within 30 days following the creation of the first tenancy, in any newly constructed or reconstructed residential building, file with the Clerk of the municipality, or with such other municipal official as is designated by the Clerk, in the case of a one-family-dwelling rental or a two-family-dwelling rental which is a non-owner-occupied premises, a certificate of registration on forms prescribed by the Commissioner of Community Affairs. Every landlord required to file a certificate of registration shall file an amended certificate within 20 days after any change in the information required to be included therein. No fee shall be required for the filing of an amendment except where the ownership of the premises has changed.
- B. Every landlord shall, within 30 days following the creation of the first tenancy, in any newly constructed or reconstructed residential multiple dwelling, as defined in section 3 of P.L. 1967, c.76 (N.J.S.A. 55:13A-3), file with the Bureau of Housing Inspection in the Department of Community Affairs a certificate of registration on forms prescribed by the Commissioner of Community Affairs.
- C. Within 30 days following the creation of a new tenancy, every landlord shall provide each occupant or tenant in his building a copy of the certificate of registration required by Subsections A and B. If an amended certificate is filed, the landlord shall furnish each occupant or tenant with a copy of the amended certificate within seven days after the amended certificate is filed with the Municipal Clerk, or with such other municipal official as is designated by the Clerk, in the case of a tenant-occupied one-family dwelling or a non-owner-occupied two-family dwelling, and within seven days of receipt of a validated certificate from the Bureau of Housing Inspection in the case of a building or project subject to the Hotel and Multiple Dwelling Law, "multiple dwelling," as defined in Section 3 of P.L. 1967, c.76 (N.J.S.A. 55:13A-3)

§ 272-2. Occupancy prior to registration.

It shall be unlawful for any person, owners or management to permit any building or structure subject to this chapter to be occupied prior to registration; provided, however, that any building or structure subject to this chapter presently occupied shall be registered within 45 days after the effective date of this chapter.

§ 272-3. Effect on other regulations.

The regulations herein contained shall be in addition to any regulation, rule or ordinance heretofore or hereafter adopted by the governing body with respect to the construction and maintenance of buildings and structures, local health ordinances and the removal or destruction of buildings and structures and parts thereof endangering the public health and safety.

§ 272-4. Abatement of nuisances and defects; cost to become lien.

The Borough, by resolution of its governing body, may abate a nuisance, correct a defect or put the premises of any building or structure subject to this chapter in proper condition so as to comply with the requirements of any municipal ordinance or state law applicable thereto, at the cost of the owner or lessor, and may expend municipal funds for such purpose and charge the same against the premises, and the amount thereof as determined by the governing body shall be a lien against the premises and collectible as provided in an act entitled, "An Act Concerning Municipalities in Relation to the Regulation of Buildings and Structures and Their Use and Occupancy and Supplementing Title 40 of the Revised Statutes," Chapter 66 of the Public Laws of 1962 of the State of New Jersey.

§ 272-5. Service of notice.

The service of notices under any ordinance of this Borough or under any state law applicable to the Borough of Atlantic Highlands upon the owner, lessor or agent of any building or structure subject to this chapter shall be sufficient notice to the owner or lessor and shall constitute service thereon by posting it upon the premises in a conspicuous place where the owner or lessor has failed to register his premises with the Municipal Clerk, as herein provided, by designating an agent in respect to the premises residing in the municipality or where such an agent has been designated but cannot be found at the address given in the registration.

§ 272-6. Violations and penalties. [Amended 2-23-2011 by Ord. No. 03-2011]

Any person, owner, manager, lessor, individual or corporation violating any of the provisions of this chapter shall, upon conviction in a court of competent jurisdiction, be subject to a penalty as provided in Chapter 1, Article II, General Penalty.

Chapter 277**RENT CONTROL**

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 6-22-2016 by Ord. No. 06-2016.¹⁴³ Amendments noted where applicable.]

§ 277-1. Rent leveling board.

- A. Board established. There is hereby continued the Rent Leveling Board within the Borough of Atlantic Highlands. The Board shall consist of five members; one shall be a tenant of a multiple dwelling in Atlantic Highlands and one shall be a landlord of a multiple dwelling residing in Atlantic Highlands; and two shall be neither a tenant nor a landlord. The existing members of the Board shall continue in office. Replacements shall be appointed by the governing body, and their terms of office shall be for a period of three years each, with each member serving without compensation. Terms shall be staggered so that the terms of no more than two members expire in any year. The term of a member appointed to fill a vacancy shall be for the remaining unexpired term. **[Amended 2-9-2024 by Ord. No. 05-2024]**
- B. Powers. The Rent Leveling Board is hereby granted, and shall have and exercise, in addition to other powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this chapter, including but not limited to the following:
- (1) To issue and promulgate such rules and regulations as it deems necessary to implement the purposes of this chapter, which rules and regulations shall have the force of law until revised, repealed or amended by the Board in the exercise of discretion, providing that such rules are filed with the Municipal Clerk.
 - (2) To supply information and assistance to landlords and tenants to help them comply with the provisions of this chapter.
 - (3) To hold hearings and adjudicate applications from landlords for hardship increases and surcharges.
 - (4) To hold hearings and adjudicate applications and complaints from tenants for reduced or improper rentals. The Board shall give both landlord and tenant reasonable opportunity to present their position before making any determination.
- C. Appeal. Both landlord and tenant may appeal in writing the findings of the Board to the governing body within 20 days from the date of the determination. The Council shall hold a hearing on the record before the Board. The appealing party should submit in writing with its appeal a written summary and basis for its appeal and provide a copy to the other interested parties. The appealing party shall be responsible to present the record before the Board for the governing body's consideration. The other interested parties should submit a written summary of their position and basis in opposition to the appeal within 15 days of receipt of the appeal. The governing body shall consider the appeal on the record before the Board and the submissions and render a decision.

§ 277-2. Rent control.

- A. Definitions. As used in this chapter:

143. Editor's Note: This ordinance also superseded former Ch. 277, Rent Control, adopted 9-11-1996 by Ord. No. 12-96. as amended.

BASE RENT — The actual legal monthly rental a tenant is paying for the apartment.

CPI — The Consumer Price Index for all urban consumers for the region of the United States, of which Atlantic Highlands, New Jersey, is a part (i.e., the New York-Northeast-New Jersey region) published periodically by the Bureau of Labor Statistics, United States Department of Labor.

CURRENT RENT — The actual legal monthly rental a tenant is paying for his apartment, including any hardship increase or improvement surcharge.¹⁴⁴

HOUSING SPACE, DWELLING OR APARTMENT — Includes the portion of a structure rented or offered for rent for living and dwelling purposes to one or more individuals or a family unit together with all privileges, services, furnishings, furniture, equipment, facilities, parking and garage facilities (whether optional or mandatory), and improvements connected with the use or occupancy of such portions of the property. Included are any building, structure, trailer, or land used as a trailer park, rented or offered for rent to one or more tenants or family units. Exempt from this chapter are commercial buildings containing two or fewer housing spaces; and housing structures of four housing spaces or fewer, and motels, hotels and similar-type buildings. Also exempt are condominiums and condominium complexes except any housing space thereof that is owned or controlled by a person or entity owning or controlling (meaning greater than 50% ownership by the same related party interests) five or more of those housing spaces that are rented or offered for rent. Not exempt from this chapter is any housing space, dwelling or apartment previously subject to the provisions of this chapter which would otherwise become exempt due to a change in the number of housing spaces owned or controlled by an individual or entity, or the number of housing spaces in a mixed-use building or housing structure, provided that the tenant leasing the housing space remains the same. **[Amended 2-9-2024 by Ord. No. 05-2024; 8-8-2024 by Ord. No. 17-2024]**

NOTIFY or NOTIFICATION — Either certified mail or hand delivery acknowledged by written receipt; or if the party refuses to claim or acknowledge delivery, by regular mail.

REAL ESTATE TAX — All real estate or property taxes paid to the Borough of Atlantic Highlands, including but not limited to municipal, county and school taxes, and any other taxes or fees listed on the annual property tax bill.

SUBSTANTIAL COMPLIANCE — That the housing space and dwelling are substantially free from all heat, hot water, elevator and all health, safety and fire violations as well as 90% qualitatively free of all other violations of the Atlantic Highlands Property Maintenance Code and/or the Multifamily Dwelling Code.

B. Except as specifically exempted, every housing space, dwelling or apartment offered for rent in the Borough of Atlantic Highlands, including first-time rentals and vacant housing, is subject to the provisions of this chapter. **[Amended 2-9-2024 by Ord. No. 05-2024]**

- (1) Establishment of rents. Establishment of rents between a landlord and a tenant in any housing unit, dwelling or apartment shall hereafter be determined by the provisions of this chapter. Establishment of rent and any renewal increase in excess of that authorized by this chapter shall be void. No rental agreement or lease provision shall waive, supersede, or preclude application of this chapter or any provision thereof, and any such lease provision shall not be effective.
- (2) Preexisting tenancies. For preexisting tenancies, the base rent during the rental year that the housing unit, dwelling or apartment becomes subject to the provisions of this chapter shall not be increased. Thereafter, annual base rent increases shall be subject to Subsection C of this

144. Editor's Note: The former definition of "date that the lease is entered into in the case of the renewal of leases," which immediately followed, was repealed 2-9-2024 by Ord. No. 05-2024.

section.

- (3) New tenancies. The owner of the housing space, dwelling, or apartment being rented for the first time, or which is vacant and will be rented to a new tenant, may enter a one-year or multi-year lease, with the base rent for the first year not being controlled by the provisions of this chapter. After the first year, the housing space, dwelling or apartment shall be subject to the provisions of this chapter, and any annual base rent increase shall be limited to such increase as permitted in Subsection C of this section.
- C. Rental increases allowed. A landlord may annually increase a tenant's base rent based on the percentage increase in the most recent Consumer Price Index (CPI) as follows: a floor of 1.5% if the percentage increase in the CPI is less than 1.5%; the actual CPI percentage increase if between 1.5% and 3%; or a ceiling of 3% if the CPI percentage increase is greater than 3%; plus or minus the tax pass-through. The rent resulting from the imposition of any increase provided hereunder shall be rounded to the nearest dollar. No landlord shall request or receive more than one CPI/tax increase per year per housing space. **[Amended 2-9-2024 by Ord. No. 05-2024]**
- (1) The CPI figures to be used are those published in the fourth month prior to the month in which the lease or periodic tenancy terminates, over the CPI published in the 16th month prior to the month of termination. By way of example, a CPI base rent increase computed in accordance with the provisions of this section shall be computed as follows:

Example

Assuming a lease or periodic tenancy expires in May of 2014, and the base rent is \$1,500 per month:

- a) 254.285 CPI for January of 2014 (the fourth month preceding the month of termination);
 - b) 249.317 CPI for January of 2013 (the 16th month preceding the month of termination);
 - c) 4.968 difference in the CPI (subtract b. from a.);
 - d) 1.993% percentage change in the CPI (take c. and divide by b.);
 - e) \$29.90 permissible CPI increase (multiply the base rent by d.). Round to the nearest dollar after including any tax increase/decrease from Subsection C(2).
- (2) Whenever the base rent is increased as provided in Subsection C(1), a tax pass-through for any real estate tax reduction shall be, or any real estate tax increase may be, included in the increase calculations. A tax pass-through is calculated by taking the real estate taxes billed by the Borough for the upcoming 12 months and subtracting the amount billed for the prior 12 months (based upon the most recent and prior annual tax bills), divided by 12 months, divided by the total square footage of the building(s) and multiplied by the square footage occupied by the tenant. Any annual real estate tax increase pass-through shall be permitted only to the extent that the real estate tax increase exceeds the permitted percentage increase provided in Subsection C(1).
 - (3) No rental increase shall be allowed during any period when the apartment or dwelling occupied by the tenant is not in substantial compliance with the Multifamily Dwelling Code and the landlord is not current on all real estate taxes billed by the Borough.
 - (4) Any landlord seeking a rent increase, lease renewal or agreement to extend or renew a lease shall provide notice of said action in writing to the tenant at least 60 days prior to the effective

date of increase, renewal, extension or other action. This notice shall include all of the CPI/tax calculations involved in computing the increase. No tenant shall be required to sign any such lease, rent increase notice, renewal or agreement to extend or renew a lease until such tenant has had the opportunity to review the documents for a period of five business days. Failure to comply with this provision shall result in the rental continuing at the old rent until proper notice is given.

- (5) Multiple-year leases. For renewal of multi-year leases, a landlord may annually increase the tenant's current rent as provided in Subsection C(1). For multi-year leases, the annual rent increase limitations must be recalculated annually as provided in Subsection C(1). The first year's lease renewal increase may be sequentially added to subsequent years. For example, if the approved CPI increase is \$65, then the first-year renewal lease rent is calculated on the former lease's base rent plus \$65. The second year's renewal rent is calculated on the first renewal year's rent from the previous renewal year plus \$65.

D. Accumulation of CPI/tax increases not permitted.

- (1) Any landlord who does not raise the rent in a particular lease year the amount permitted by the CPI/tax increase in Subsection C shall not have the right to accumulate this increase and/or impose this increase upon a tenant in a subsequent year, in addition to the permissible increase for that subsequent year.

E. Tax appeal; tenant credit.

- (1) In the event a real estate tax appeal is taken by the landlord and the tax is reduced, after deducting all expenses incurred by the landlord in prosecuting the appeal, the landlord shall remit and tenant(s) shall receive 50% of the reduction for the portion of the tax year during which the tenant has paid rent, in the form of a credit on the next lease renewal. **[Amended 2-9-2024 by Ord. No. 05-2024]**
- (2) The property tax shall be calculated by dividing the assessed taxes by the number of square feet of all housing space in the dwelling. The tax shall be proportionate to the number of square feet occupied by the tenant. The landlord shall provide the Board in writing with a detailed list of the items of expense incurred by him in prosecuting the tax appeal. If the above tax reduction is partially based upon property changes or alterations, the allocation of the percentage of the reduction remitted to tenants shall be determined by the Board.

F. ¹⁴⁵Appeal by landlord: hardship or capital improvement increases. **[Amended 2-9-2024 by Ord. No. 05-2024]**

- (1) In the event that a landlord cannot receive a fair return after having received the increase provided in Subsection C, he or she may appeal to the Rent Leveling Board for increased rental for up to five years. The Board may grant a hardship rent increase to meet this requirement. For the period of the requested increase and two years before and after or other period as determined by the Board, the landlord must provide evidence according to the standards recognized at law for determining fair return. The Board will rely upon the recognized standard that a landlord should receive a net operating income of at least 40% of the gross annual income after deducting reasonable and necessary operating expenses, including depreciation of capitalized repairs and replacements computed on a straight line basis as per IRS guidelines, unless there is an adequate

145. Editor's Note: Former Subsection F, regarding the decontrolling of first-time rentals, was repealed 2-9-2024 by Ord. No. 05-2024. This ordinance also redesignated former Subsections G through L as Subsections F through K, respectively.

showing that utilization of this standard will result in an unfair return to the landlord. Gross annual income will be calculated using the occupancy for the past 12 months, the average occupancy rate for the county, or 90%, whichever is greater. Operating expenses shall not include mortgage principal or interest payments or amortization. Any hardship increase granted by the Board will be in addition to the annual CPI/tax increase and shall be equally prorated to all units within the structure 30 days after the decision of the Rent Leveling Board, provided that no increase shall take effect with regard to any tenant who has a written lease until the expiration of the lease, unless the lease provides otherwise.

- (2) A landlord may seek surcharges for major capital improvements or services proposed or completed within the past three years. To qualify for a major improvement surcharge, a claimant must show a benefit to the tenant, in the form of improved lifestyle, convenience, ease and/or security, and that the improvement satisfies the IRS standards for capital improvements. Expenditures classified as capital by the IRS for items requiring periodic repair or replacement, such as heating systems, windows, roofs, etc., are to be considered operational expenses unless there is a significant benefit to tenants. The landlord must notify each tenant of the total costs of the completed capital improvement or service, the number of years of useful life of the improvement as claimed by the landlord for purposes of depreciation for income tax purposes, the cost of the improvement, the total number of square feet to the dwelling or garden apartment complex, the total square feet occupied by the tenant and the capital improvement surcharge he or she is seeking from each tenant. The landlord seeking a capital improvement or service surcharge shall appeal for the surcharge to the Rent Leveling Board, who shall determine if the improvement is a qualified major improvement and, if so, may permit such increase to take place and may direct that the increase shall be collected in equal monthly payments spread over the useful life of the capital improvement. If the increase is granted, it shall not be considered part of the base rental nor calculated in future CPI increases. No increase authorized by this section shall exceed 15% of the tenant's base rent. No surcharge shall begin until the capital improvement or service is completed; no surcharge shall be allowed or collected during any period that the improvement or service is not maintained or provided.
 - (3) Prior to the hearing before the Board on any such appeal provided for in Subsection F(1) and (2), a landlord must post in the lobby of each building, or, if no lobby is present, in a conspicuous place in and about the premises, a notice of the appeal setting forth, in detail, the basis for the appeal. This notice must be posted for at least 20 days prior to the proposed date of the appeal hearing. The landlord shall also send by mail or deliver personally a copy of this notice to each tenant at least 20 days prior to the proposed date of the hearing. The landlord must also submit to the Board a certification from the Code Officer of Atlantic Highlands that the building and grounds are in substantial compliance with the Multifamily Dwelling Code.
- G. Standards of service. During the term of this chapter, the landlord shall maintain the same standards of service, maintenance, furniture, furnishings and equipment in the housing space and dwelling as he or she provided or was required to do by law or lease at the date the lease was entered into. If a landlord fails to provide the above standards of service for more than 30 days, or for a shorter period considering the circumstances, a tenant may appeal to the Rent Leveling Board for a rent reduction. The Board may order the landlord to reduce the tenant's monthly rent beginning the month the change or defects began, and until the month after all changes or defects are corrected, as confirmed by the Multifamily Dwelling Inspector. In determining any appropriate reduction, the Board may consider the loss of use of the affected area as well as the overall impact upon the tenant. Any rent reduction is in addition to any other penalties provided for in this chapter. **[Amended 2-9-2024 by Ord. No. 05-2024]**

- H. Posting required. All landlords shall be required to include the following verbiage in all renewal leases of current tenants which are subject to the provisions of this chapter:

"This lease is subject to the provisions of Ordinance No. ____-2024 of the Borough of Atlantic Highlands, which outlines your rights and remedies pertaining to rent control, including the right to seek relief from the Rent Control Board. A copy of the ordinance is obtainable from the Municipal Clerk of the Borough of Atlantic Highlands." **[Amended 2-9-2024 by Ord. No. 05-2024]**

- I. Request for information. When the Rent Leveling Board shall request of any landlord any information with respect to any rental unit or the landlord's property or operation, such information shall be provided to the Rent Leveling Board within 20 days of such request.
- J. Tenant complaint against landlord. Any tenant filing a complaint with the Rent Leveling Board against the landlord shall be required to fill out and execute the complaint form as promulgated by the Board and provide supporting documentation, and serve upon the landlord a copy of the complaint form and documentation personally or by certified mail. The landlord shall be entitled to submit a written response to the complaint to the Rent Leveling Board within 15 days of receipt. The Board may review the complaint and landlord response and, if the documentation is deemed sufficient by the Board, the Board may make a written determination as to the complaint and notify the parties of its decision. In the alternative, the Board may schedule a hearing and notify the parties, and each party shall be entitled to appear and present its position. The Board will thereafter render a decision. Either party may appeal the Board decision to the governing body as per § 277-1C. The tenant shall be responsible to continue to pay the uncontested portion of the rent during the complaint process.
- K. Precedence of ordinance. Should a lease, or any provision of a lease, entered into between the landlord and tenant be in conflict with this chapter, this chapter shall control and apply.

§ 277-3. Senior Citizens and Disabled Protected Tenancy Act.

- A. Established. The Rent Leveling Board has been authorized and instructed to administer the provisions of the Senior Citizens and Disabled Protected Tenancy Act, N.J.S.A. 2A:18-61.22 et seq. The Rent Leveling Board will periodically report to the Mayor and Council its recommendations as to the fees which should be charged to owners seeking to convert properties to condominiums or cooperatives as provided in N.J.S.A. 2A:18-61.35.
- B. Fees. The following fee structure is provided to cover the costs of the services to be provided by the Borough under the provisions of the Senior Citizens and Disabled Protected Tenancy Act and are to be paid by the owners of properties sought to be converted to condominiums or cooperatives at the time such owners take steps to invoke the services of the Borough under the Senior Citizens and Disabled Protected Tenancy Act.
- (1) Two thousand dollars per unit for the application for conversion of structures; and **[Amended 2-9-2024 by Ord. No. 05-2024]**
 - (2) Two hundred dollars for each unit.

§ 277-4. Violations and penalties.

A willful violation of this chapter, including, but not limited to, the willful filing with the Rent Leveling Board of any material misstatement of fact, or the failure to comply with a final administrative determination of the Board and/or the Mayor and Council, shall be subject to complaint in Municipal Court and shall be punishable by a fine of not more than \$500 and shall be considered a separate violation as to

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each leasehold. A complaint may be signed by an affected tenant or by the appropriate Borough official.

§ 277-5. General.

- A. Purpose. This chapter being necessary for the welfare of the Borough and its inhabitants shall be liberally construed to effectuate the purposes thereof.
- B. Fees for complaints/appeals. In order to partially defray the costs incurred for conducting Board proceedings and any professional assistance that may be required, the following fee schedule for complaints/appeals is applicable.
 - (1) Hardship increase appeal by landlord: \$300.
 - (2) Capital improvement surcharge appeal by landlord: \$350.
 - (3) Complaint by tenant challenging rent increase or rent: \$50. If the tenant's rent appeal is successful, the appeal fee will be refunded to the tenant. **[Amended 2-9-2024 by Ord. No. 05-2024]**
- C. ¹⁴⁶When effective. This chapter supersedes the existing Chapter 277 and shall take effect immediately upon its final passage and publication as required by law.

146. Editor's Note: Former Subsection C, which established a termination date for this chapter, which immediately followed, was repealed 2-9-2024 by Ord. No. 05-2024. This ordinance also redesignated former Subsection D as Subsection C.

Chapter 281**SALT STORAGE, PRIVATELY OWNED**

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 5-23-2024 by Ord. No. 12-2024. Amendments noted where applicable.]

§ 281-1. Purpose.

- A. The purpose of this chapter is to prevent stored salt and other solid deicing materials from being exposed to stormwater.
- B. This chapter establishes requirements for the storage of salt and other solid deicing materials on properties not owned or operated by the municipality (privately owned), including residences, in the Borough of Atlantic Highlands to protect the environment, public health, safety and welfare, and to prescribe penalties for failure to comply.

§ 281-2. Definitions.

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this chapter clearly demonstrates a different meaning. When consistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

DEICING MATERIALS — Any granular or solid material such as melting salt or any other granular solid that assists in the melting of snow.

IMPERVIOUS SURFACE — A surface that has been covered with a layer of material so that it is highly resistant to infiltration by water.

PERMANENT STRUCTURE — A permanent building or permanent structure that is anchored to a permanent foundation with an impermeable floor, and that is completely roofed and walled (new structures require a door or other means of sealing the accessway from wind-driven rainfall). A fabric frame structure is a permanent structure if it meets the following specifications:

- A. Concrete blocks, jersey barriers or other similar material shall be placed around the interior of the structure to protect the side walls during loading and unloading of deicing materials;
- B. The design shall prevent stormwater run-on and run-through, and the fabric cannot leak;
- C. The structure shall be erected on an impermeable slab;
- D. The structure cannot be open-sided; and
- E. The structure shall have a roll-up door or other means of sealing the accessway from wind-driven rainfall.

PERSON — Any individual, corporation, company, partnership, firm, association, or political subdivision of this state subject to municipal jurisdiction.

RESIDENT — A person who resides on a residential property where deicing material is stored.

STORM DRAIN INLET — The point of entry into the storm sewer system.

§ 281-3. Deicing material storage requirements.

- A. Temporary outdoor storage of deicing materials in accordance with the requirements below is allowed between October 15 and April 15:
- (1) Loose materials shall be placed on a flat, impervious surface in a manner that prevents stormwater run-through;
 - (2) Loose materials shall be placed at least 50 feet from surface water bodies, storm drain inlets, ditches and/or other stormwater conveyance channels;
 - (3) Loose materials shall be maintained in a cone-shaped storage pile. If loading or unloading activities alter the cone shape during daily activities, tracked materials shall be swept back into the storage pile, and the storage pile shall be reshaped into a cone after use;
 - (4) Loose materials shall be covered as follows:
 - (a) The cover shall be waterproof, impermeable, and flexible;
 - (b) The cover shall extend to the base of the pile(s);
 - (c) The cover shall be free from holes or tears;
 - (d) The cover shall be secured and weighed down around the perimeter to prevent removal by wind; and
 - (e) Weight shall be placed on the cover(s) in such a way that minimizes the potential of exposure as materials shift and runoff flows down to the base of the pile.
 - [1] Sandbags lashed together with rope or cable and placed uniformly over the flexible cover, or poly-cord, nets provide a suitable method. Items that can potentially hold water (e.g., old tires) shall not be used;
 - (5) Containers must be sealed when not in use; and
 - (6) The site shall be free of all deicing materials between April 16 and October 14.
- B. Deicing materials should be stored in a permanent structure if a suitable storage structure is available. For storage of loose deicing materials in a permanent structure, such storage may be permanent, and thus not restricted to October 15 through April 15.
- C. The property owner, or owner of the deicing materials if different, shall designate a person(s) responsible for operations at the site where these materials are stored outdoors, and who shall document that weekly inspections are conducted to ensure that the conditions of this chapter are met. Inspection records shall be kept on site and made available to the municipality upon request.
- (1) Residents who operate businesses from their homes that utilize deicing materials are required to perform weekly inspections.

§ 281-4. Exemptions.

- A. Residents may store deicing materials outside in a solid-walled, closed container that prevents precipitation from entering and exiting the container, and which prevents the deicing materials from leaking or spilling out. Under these circumstances, weekly inspections are not necessary, but repair or replacement of damaged or inadequate containers shall occur within two weeks.

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- B. If containerized (in bags or buckets) deicing materials are stored within a permanent structure, they are not subject to the storage and inspection requirements in § 281-3 above. Piles of deicing materials are not exempt, even if stored in a permanent structure.
- C. This chapter does not apply to facilities where the stormwater discharges from deicing material storage activities are regulated under another NJPDES permit.

§ 281-5. Enforcement.

This chapter shall be enforced by the Police Department and/or other municipal officials of the Borough of Atlantic Highlands during the course of ordinary enforcement duties.

§ 281-6. Violations and penalties.

Any person(s) who is found to be in violation of the provisions of this chapter shall have 72 hours to complete corrective action. Repeat violations and/or failure to complete corrective action shall be subject to a fine in accordance with the general penalty, § 1-15, of the Revised General Ordinances of the Borough of Atlantic Highlands.

SEWER USE

Chapter 285

SEWER USE

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention — See Ch. 178.

Stormwater management — See Ch. 311.

Stormwater control — See Ch. 306.

ARTICLE I
Commercial and Industrial Waste
[Adopted 9-13-1995 by Ord. No. 17-95]

§ 285-1. Definitions.

For the purpose of this article, the following terms shall have the meanings indicated:

COMMERCIAL AND INDUSTRIAL WASTE — Liquid or other wastes resulting from any processes of industry, manufacture, trade or business, including from the commercial preparation of food from any restaurant or catering facility, or from the development of any natural resources.

§ 285-2. Grease, oil and sand interceptors.

- A. Grease, oil and sand interceptors shall be provided when in the opinion of the appropriate Borough official they are necessary for the proper handling of commercial or industrial liquid wastes containing grease and/or dough in excessive amounts, or any flammable wastes, sand and other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Borough and shall be located as to be readily and easily accessible for cleaning and inspection.
- B. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable covers which when bolted in place shall be gastight and watertight.

§ 285-3. Maintenance of grease, oil and sand interceptors.

Where installed, all grease, oil and sand interceptors shall be cleaned and maintained by the owner and/or tenant at his expense as often as necessary to insure continuous efficient operation at all times.

§ 285-4. Disposal of waste from interceptors.

All waste material from interceptors must be disposed of in a proper manner by properly licensed contractors. The owner/tenant must obtain, and retain available for inspection for at least three years, adequate documentation demonstrating the proper removal and disposal of the waste material by a qualified contractor, and provide this documentation upon request of the Borough inspectors.

§ 285-5. Inspections.

The Borough shall have the right to inspect the interceptor system and disposal documentation at any reasonable time for purpose of determining compliance.

ARTICLE II
Use of Public Sewers
[Adopted 5-28-1997 by Ord. No. 7-97]

§ 285-6. Prohibited discharges.

It shall be unlawful to discharge to any natural outlet within the Borough or in any area within the Borough any sewage or other polluted waters, except where suitable treatment approved by the Borough has been provided.

§ 285-7. Location of privies, septic tanks and cesspools restricted.

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage on any improved lot within the Borough when said lot property line is within a two-hundred-foot radius of a public sanitary sewer line.

§ 285-8. Connection required.

The owner of each house, building, or lot actually or customarily used for human occupancy, employment, recreation or other purposes, located within the Borough and having a lot property line within a two-hundred-foot radius of a public sanitary sewer line which currently exists or in the future may exist, is required at his expense to install and connect suitable sewage discharge facilities directly with the public sanitary sewer line in accordance with the provisions of this article within 120 days of notice being sent to said owner by the Borough.

§ 285-9. Hardship cases.

In the event it would be a hardship for the property owner to connect to a public sanitary sewer line, application may be made to the Borough by the property owner to continue the use of the private septic facility existing on the premises at the time of the adoption of this article.

§ 285-10. Permit to make connection required.

No person unauthorized by the Borough shall uncover, make any connection with or opening into, use, alter or disturb any public sanitary sewer line or appurtenance without first obtaining a written permit from the Borough.

§ 285-11. Permit application; fees.¹⁴⁷

The owner of property seeking to connect to the public sanitary sewer line or his agent shall make application on a form furnished by the Borough for a permit to install and connect suitable sewage discharge facilities directly with the public sanitary sewer line. The application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Borough. The permit and connection fees are as set forth in Chapter 168, Fees. In the alternative, the owner may elect to have the sewer connection fee billed quarterly in four equal quarterly installments. If so elected, each quarterly installment will have added a service fee as provided in Chapter 168, Article II. The initial quarterly water/sewer bill will be prorated as of the connection date.

147. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 285-12. Responsibility for costs of installation and connection.

All costs and expenses incident to the installation and connection of a suitable sewage discharge facilities directly with the public sanitary sewer line shall be borne by the owner of the property. The owner shall indemnify the Borough from any loss or damage that may directly or indirectly be occasioned by the installation and connection of said suitable sewage discharge facility.

§ 285-13. Separate facilities required.

Separate and independent suitable sewage discharge facilities shall be installed for every independent structure on any lot, except where one structure stands at the rear of another on an interior lot and it is in the judgment of the Borough impractical to install or no other private suitable sewage discharge facility is available or can be installed or connected to a public sanitary sewer line. In such case, the suitable sewage discharge facility from the structure most practically located, in the judgment of the Borough, shall serve both or whichever structures the Borough deems necessary on said lot or lots.

§ 285-14. Connection of existing facilities to public sewer.

Existing suitable sewage discharge facilities may be connected to the public sanitary sewer line upon application, examination, testing and approval by the Borough.

§ 285-15. Specifications.

The size, slope, alignment, materials of construction, placing of pipe, joining, testing, excavation and backfilling of a trench, of a suitable sewage discharge facility shall conform to the requirement of the building and plumbing code of the state and the Borough. All such installations and connections to the public sanitary sewer line of a suitable sewage discharge facility shall be made by a plumber licensed by the state.

§ 285-16. Manner of connection.

Whenever possible, the installation of a suitable sewage discharge facility shall connect to any structure from which sewage is to be discharged at an elevation below the first floor of said structure. In any structure in which sewage is to be discharged from an area which is too low to permit gravity flow of the sewage to the public sanitary sewer line, such sewage shall be lifted by an approved means to the connection made by the suitable sewage discharge facility with the structure.

§ 285-17. Discharge of runoff or groundwater prohibited.

No suitable sewage discharge facility which is connected either directly or indirectly to a public sanitary sewer line shall be connected either directly or indirectly to any roof downspout, foundation drain, areaway drains or other sources of surface runoff or groundwater.

§ 285-18. Notification that facility is ready for connection.

The final approval of a suitable sewage discharge facility shall not become effective until the installation and connection to the public sanitary sewage line is completed to the satisfaction of the Borough. The owner or the applicant for the permit shall notify the Borough when the suitable sewage discharge facility is ready for connection to the public sanitary sewage line which said connection shall be made under the supervision of the Borough or its representative.

§ 285-19. Violations and penalties.

Any owner who has been notified in accordance with the provisions of this article, and fails to comply with these provisions by failing to install and connect suitable sewage discharge facilities directly with the public sanitary sewer line or by constructing or maintaining any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage on any improved lot within the Borough, when said lot property line is within a two-hundred-foot radius of a public sanitary sewer line, shall be subject to a fine of \$15 for each day of noncompliance. Compliance shall be deemed to have been achieved upon inspection and approval by the Borough. Any owner or applicant for a permit who fails to comply with these provisions shall be subject to a fine of \$15 for each day of noncompliance. Compliance shall be deemed to have been achieved upon inspection and approval by the Borough.

SOLID WASTE

Chapter 300

SOLID WASTE

[HISTORY: Adopted the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Littering — See Ch. 216.

ARTICLE I

Collection

[Adopted by the Board of Health 9-1-1970; amended in its entirety by the Mayor and Borough Council at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

§ 300-1. Residential collections.

Every person placing garbage, refuse or other matter for municipal collection, as prescribed by the Borough Council, from, on or in connection with a residential property or residential units shall observe the following requirements:

- A. Garbage shall be placed at the curblin in watertight containers equipped with tight-fitting covers, shall be of an approved type with handles and shall not exceed 50 gallons in capacity. Small articles of combustible material may be placed in garbage containers with garbage.
- B. All paper, rags, cloth or other combustible material not placed in any garbage container shall be placed in cartons and/or wrapped and tied securely so that it will not break when handled or thrown into the collection trucks.
- C. All normal household refuse will be accepted by the garbage collectors, but material and refuse from construction, repairs or alterations to dwellings or structures will not be accepted.
- D. Hedge and shrubbery clippings, tree trimmings and garden refuse will be accepted if secured for ease of handling and placed at the curblin.
- E. Household furniture and appliances will be accepted at the curblin, provided that all furniture of wood construction has been broken or cut into pieces, the total length of which shall not exceed three feet and a width of three feet nor a height of three feet.

§ 300-2. Business and factory collections.

Every person placing garbage, refuse or other matter for municipal collection from business establishments, factories and all other locations, excepting residence units, shall observe the following requirements:

- A. Garbage containers shall be the same as required for residential properties but the containers may be of a larger volume and they must be placed at the curblin unless other arrangements have been approved by the Borough Administrator and the Supervisor of Streets and/or Sanitation. No container and contents shall have a combined weight in excess of 50 pounds.
- B. All papers, cloth, rags, particles of wood or other combustible material shall be either placed for collection in cartons or other suitable containers and the contents secured by proper cover, tying, wrapping or otherwise, or, if not placed in containers, shall be securely tied, packaged or bundled so that the same may be handled or placed in collection trucks without breaking apart or without causing contents to become free or loose or blown about. Any such cartons or other combustible container and any such material which is tied, packaged or bundled, as in this section required, shall have a width of not over three feet, a length of not over three feet and a height of not over three feet.

§ 300-3. Prohibited material.

No persons shall place on the curb, as herein elsewhere required, or anywhere else for collection, any explosive or highly inflammable materials such as benzene, gasoline, petroleum, explosive powder,

nitrocellulose film or unbroken fluorescent tubes. Special arrangements, however, may be made with the Borough Administrator for immediate collection and disposal of any articles or materials mentioned in this section, or articles or materials of any highly combustible nature.

§ 300-4. Exception for handicapped persons.

Wherever it is required herein for placement of garbage, refuse and other materials to be at a curblin, said requirement shall not apply to handicapped persons.

§ 300-5. Definitions.

As used in this article, the following words shall have the meanings indicated:

GARBAGE — All animal or vegetable waste from any kitchen, market or store or other place or any waste which, due to its animal or vegetable content, may decompose, cause odor, attract flies or other insects or in any manner be a hazard to the public health.

HANDICAPPED PERSON — The term "handicapped person," as employed herein, shall include any person who has lost the use of one or more limbs as a consequence of paralysis, amputation, or other permanent disability or who is permanently disabled as to be able to ambulate without the aid of an assisting device or whose mobility is otherwise limited as certified by a physician with a plenary license to practice medicine and surgery in this state.

PERSON — Any individual, partnership, association, corporation or other legal entity.

REFUSE — All other material not described in the definitions in this section or garbage and ashes.

§ 300-6. Conformance required.

The aforementioned material will be disposed of in no other manner than that prescribed by this article.

§ 300-7. Violations and penalties.

Any person who violates any provision of this article shall, upon conviction, be subject to a penalty as provided in Chapter 1, Article II, General Penalty.

ARTICLE II

Refuse Collection**[Adopted 9-28-2005 by Ord. No. 15-2005]****§ 300-8. Time limits for placement and removal of containers.**

- A. No person shall set or place any refuse or other material on the curblane for collection from any house, apartment or residence unit before 6:00 p.m. of the day prior to the collection day for the district in which the same is situated, nor allow any empty refuse containers to remain on the curblane, as herein provided, after 7:00 p.m. of the day of collection, and such containers must be stored in such a manner as not to create a nuisance or annoyance to adjacent neighbors.
- B. No person shall set or place any refuse or other material on the curblane for collection from any place of business before 9:00 p.m. of the day prior to the collection day for the district in which the same is situated, nor allow any empty refuse containers to remain on the curblane, as herein provided, after 9:00 a.m. of the day of the collection, and such containers shall be stored in a place that is not visible from the street, curblane or sidewalk and in such a manner as not to create a nuisance or annoyance to adjacent neighbors. No place of business shall place any refuse or other material on the curblane for collection on Saturday after the refuse or other material has been collected on Saturday morning.

§ 300-9. Placement for collection.

All refuse and other materials set or placed for collection from any place of business, house, apartment or residence unit be set or placed as near as possible on or along the curblane, and shall not be set or placed in any gutter, road or on any walk, sidewalk or public thoroughfare so as to interfere with public travel.

§ 300-10. Violations and penalties.¹⁴⁸

Violations of this article shall be subject to a penalty as provided in Chapter 1, Article II, General Penalty.

148. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE III

Yard Waste**[Adopted 11-30-2005 by Ord. No. 27-2005]****§ 300-11. Purpose.**

This purpose of this article is to establish requirements for the proper handling of yard waste in the Borough of Atlantic Highlands, so as to protect public health, safety and welfare, and to prescribe penalties for the failure to comply.

§ 300-12. Definitions.

For the purpose of this article, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

CONTAINERIZED — The placement of yard waste in a trash can, bucket, bag or other vessel, such as to prevent the yard waste from spilling or blowing out into the street and coming into contact with stormwater.

PERSON — Any individual, corporation, company, partnership, firm, association, or political subdivision of this state subject to municipal jurisdiction.

STREET — Any street, avenue, boulevard, road, parkway, viaduct, drive, or other way, which is an existing state, county, or municipal roadway, and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas, and other areas within the street lines.

YARD WASTE — Leaves and grass clippings.

§ 300-13. Prohibited conduct.

The owner or occupant of any property, or any employee or contractor of such owner or occupant engaged to provide lawn care or landscaping services, shall not sweep, rake, blow or otherwise place yard waste, unless the yard waste is containerized, in the street. If such placement of yard waste occurs, the party responsible for placement of the yard waste must remove the yard waste from the street or said party shall be deemed in violation of this article.

§ 300-14. Yard waste collection.

Sweeping, raking, blowing or otherwise placing yard waste that is not containerized at the curb or along the street is only allowed during the five days prior to a scheduled and announced collection, and shall not be placed closer than 10 feet from any storm drain inlet. Placement of such yard waste at the curb or along the street at any other time or in any other manner is a violation of this article. If such placement of yard waste occurs, the party responsible for placement of the yard waste must remove the yard waste from the street or said party shall be deemed in violation of this article.

§ 300-15. Enforcement.

The Code Enforcement Officer of the Borough of Atlantic Highlands shall enforce the provisions of this article.

§ 300-16. Violations and penalties.

Any person(s) who is found to be in violation of the provisions of this article shall be subject to a fine not to exceed \$300.

ARTICLE IV
Refuse Containers
[Adopted 6-10-2009 by Ord. No. 09-2009]

§ 300-17. Purpose.¹⁴⁹

The purpose of this article is to require dumpsters and other refuse containers that are outdoors or exposed to stormwater to be covered at all times and to prohibit the spilling, dumping, leaking, or otherwise discharge of liquids, semiliquids or solids from the containers to the municipal separate storm sewer system(s) operated by the Borough of Atlantic Highlands and/or the waters of the state so as to protect public health, safety and welfare, and to prescribe penalties for the failure to comply.

§ 300-18. Definitions.

For the purpose of this article, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) — A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is owned or operated by the Borough of Atlantic Highlands or other public body, and is designed and used for collecting and conveying stormwater.

PERSON — Any individual, corporation, company, partnership, firm, association, or political subdivision of this state subject to municipal jurisdiction.

REFUSE CONTAINER — Any waste container that a person controls whether owned, leased, or operated, including dumpsters, trash cans, garbage pails, and plastic trash bags.

STORMWATER — Water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface, is captured by separate storm sewers or other sewerage or drainage facilities, or is conveyed by snow removal equipment.

WATERS OF THE STATE — The ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

§ 300-19. Prohibited conduct.

- A. Any person who controls, whether owned, leased, or operated, a refuse container or dumpster must ensure that such container or dumpster is covered at all times and shall prevent refuse from spilling out or overflowing.
- B. Any person who owns leases or otherwise uses a refuse container or dumpster must ensure that such container or dumpster does not leak or otherwise discharge liquids, semiliquids or solids to the municipal separate storm sewer system(s) operated by the Borough of Atlantic Highlands.

149.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 300-20. Exceptions to prohibition.¹⁵⁰

The provisions of this article shall not apply to the following:

- A. Permitted temporary demolition containers.
- B. Litter receptacles (other than dumpsters or other bulk containers).
- C. Individual homeowner trash and recycling containers.
- D. Refuse containers at facilities authorized to discharge stormwater under a valid NJPDES permit.
- E. Large bulky items (e.g., furniture, bound carpet and padding, white goods placed curbside for pickup).

§ 300-21. Enforcement.

This article shall be enforced by the Police Department, and/or Code Enforcement Officer of the Borough of Atlantic Highlands.

§ 300-22. Violations and penalties.

Any person(s) who is found to be in violation of the provisions of this article shall be subject to a fine not to exceed \$2,000.

150.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE V

Recycling**[Adopted 3-10-2010 by Ord. No. 04-2010]****§ 300-23. Findings.**

Proper management of solid waste is an important matter of public health and safety. The source separation and recovery of certain recyclable materials will serve the public interest by conserving energy and natural resources, and reducing waste disposal expenses. In accordance with the requirements of the New Jersey Mandatory Source Separation and Recycling Act (N.J.S.A. 13:1E-99.11 et seq.) and the 2009 Update to the Monmouth County Solid Waste Management Plan, it is therefore necessary to update and amend existing municipal rules and regulations for the separation, storage, collection and recovery of designated recyclable materials.

§ 300-24. Source separation of recyclable materials.

- A. It shall be mandatory for all persons who are owners, lessees and occupants of residential property, of business and industrial properties, and of private or public and government institutions and buildings, to separate newspaper, corrugated cardboard, clean mixed paper, aluminum cans, tin and bimetal cans, glass bottles and jars, and pourable plastic bottles ("designated recyclables"), from all other solid waste produced by such residences and establishments, for the collection and ultimate recycling of such materials.

- B. Definitions. As used in this article, the following terms shall have the meanings indicated:

ALUMINUM CANS — All disposable cans made of aluminum used for food or beverages. Specifically excluded are aluminum foils, pie tins, trays, cookware and other aluminum products.

CLEAN MIXED PAPER — High-grade bond paper, mixed office and school papers, such as stationary, construction paper and writing tablets, including computer printouts, magazines, gift wrapping paper, softcover books, junk mail and single-layer cardboard (chipboard). Specifically excluded are carbon papers, hardcover books (unless cover and binder are removed), paper cups and plates, food wrappers or any other paper contaminated by direct contact with food products, and paper products used for personal hygiene, such as tissues.

CORRUGATED CARDBOARD — Layered cardboard including a waffled section between the layers, of the type commonly used to make boxes and cartons. Specifically excluded are waxed cardboard and any cardboard contaminated by direct contact with food, such as pizza boxes.

GLASS BOTTLES AND JARS — Transparent or translucent containers made from silica or sand, soda ash and limestone, used for the packaging or bottling of various products. Specifically excluded are dishware, light bulbs, window glass, ceramics and other glass products.

NEWSPAPER — Includes paper of the type commonly referred to as newsprint and includes any inserts which are normally included in the newspaper. Specifically excluded are any pages of the newspaper used for household projects and crafts, such as painting or papier-mache projects, or used for cleanup of pet waste.

POURABLE PLASTIC CONTAINERS — Plastic bottles where the neck is smaller than the body of the container, and is limited to plastic resin type #1 PETE and plastic resin type #2 HDPE. Specifically excluded are other resin types (#2 through #7) and non-bottle plastic containers such as margarine tubs and other consumer items and packages, such as film plastics, blister packaging, boxes, baskets, toys and other products.

TIN AND BIMETAL CANS — All disposable cans made of tin, steel or a combination of metals including, but not limited to, containers commonly used for food products. Specifically excluded are cans which contain toxic products, such as paints and oils.

- C. Residences, businesses and institutions provided with recyclables collection service by municipal forces or through municipal contract shall place all designated recyclables in the appropriate containers at curbside or other area(s) in the manner and schedule as regularly published and distributed by the municipality.
- D. Any multifamily complex, business or institution not provided recyclables collection service by municipal forces or through municipal contract shall be responsible for arranging the appropriate separation, storage, collection and ultimate recycling of all designated recyclables.
- E. Any multifamily complex, business or institution which is not provided recyclables collection service by municipal forces or through municipal contract shall provide the municipality with, at a minimum, an annual report describing arrangements for both solid waste and recyclables collection services, including the size, number and location of storage containers, frequency of pickup service, the name and address of any contractor hired to provide such service, and phone and other contact information for the contractor.
- F. Leaves shall be kept separate from other vegetative waste, and shall only be placed for collection in the manner and schedule as shall be published and distributed by the municipality. Grass clippings shall not be placed with other materials for solid waste collection. This requirement shall not prohibit any person or establishment from making arrangements to collect leaves and grass directly from their property through their own efforts or via contract with a landscape service or other appropriate company, for direct transportation to a permitted recycling operation.
- G. The following bulky recyclables shall not be placed with solid waste at the curbside or in containers provided for waste collection and transportation to a disposal facility: concrete, asphalt, brick, block, tree stumps, and tree limbs over three inches in diameter, metal appliances or bulk metal items larger than one cubic foot and/or heavier than five pounds.
- H. Automotive and other vehicle or wet cell batteries, used motor oil and antifreeze shall not be disposed as solid waste. Such items are to be kept separate from other waste materials and recyclables, and brought to local service stations, scrap yards, or publicly-operated recycling facilities designed and permitted to handle such products.
- I. Common, nonrechargeable dry- cell batteries, commonly labeled A, AA, AAA, C, D and nine-volt, may be disposed with regular municipal solid waste; however, rechargeable dry cell and button batteries still contain significant amounts of various toxic metals, including mercury, and shall be separated and brought to retail outlets or publicly operated recycling facilities providing specific arrangements for the proper packaging and shipment of rechargeable and/or button batteries to appropriate processing facilities.
- J. Computers, computer monitors and other related electronic hardware, as well as analog and digital televisions, are prohibited from being placed with other solid waste for disposal. These and other electronic devices shall be kept separate and brought to retail outlets or publicly operated recycling facilities providing specific arrangements for shipment of these items to appropriate processing facilities.

§ 300-25. Ownership of recyclables; scavenging prohibited; sale or donation.

- A. All designated recyclables become the property of the municipality and/or the contracted collector once placed at the curbside, in a container provided by the contractor, or brought to and accepted at the Municipal Recycling Depot.
- B. It shall be a violation of this section for any unauthorized person to pick up or cause to be picked up, any recyclable materials as defined herein. Each such collection shall constitute a separate and distinct offense.
- C. Notwithstanding anything herein to the contrary, any person may donate or sell self-generated recyclable materials to any person, partnership or corporation, whether or not operating for profit. The person, partnership or corporation, however, shall not pick up the recyclable materials at curbside.

§ 300-26. Liquid and hazardous waste exclusions.

- A. No liquids of any type shall be placed with recyclables, or with solid waste for collection and disposal.
- B. No chemicals, liquid paints, pesticides, herbicides, reactive polishes or cleansers, cleaning or automotive products, or other hazardous wastes shall be placed with recyclables, or with solid waste for collection and disposal.

§ 300-27. Provision and labeling of recycling containers.

- A. All apartment and other multifamily complexes, businesses, schools and other public or private institutions shall provide separate and clearly marked containers for use by residents, students, employees, customers or other visitors, for trash and the various types of recyclables, as appropriate.
- B. Any company or agency providing dumpsters, roll-off or other containers to any apartment or other multifamily complex with shared disposal and recycling areas, or to any business, school or other institution, or for any construction/demolition project, shall clearly mark such container for trash or for specific recyclables, as may be appropriate.

§ 300-28. Debris Management Plan for construction permits; deposit.

- A. The municipality shall issue construction and demolition permits only after the applicant has provided a Debris Management Plan identifying the estimated number and types of containers to be used for the handling of all solid wastes and recyclables generated during the project, and arrangements for the proper disposition of the generated materials.
- B. A refundable deposit of \$50 to \$1,000 shall be submitted with the Debris Management Plan, which will be returned after completion of the project and submittal of appropriate records documenting the quantity and disposition of solid wastes and recyclables. Inadequate or incomplete documentation may result in the forfeiture of some or all of the required deposit.

§ 300-29. Appointment and duties of Recycling Coordinator.

- A. The position of Recycling Coordinator is hereby created and established within the municipality, to be appointed by the governing body, for a term of one year expiring on December 31 of said year.
- B. The duties of the Recycling Coordinator shall include, but are not limited to: the preparation of annual or other reports as required by state and county agencies regarding local solid waste and recycling

programs, reviewing the performance of local schools and municipal agencies in conducting recycling activities, periodic review of local residential and business recycling practices and compliance, review and recommendation on local subdivision and site plan submittals and local construction and demolition projects for appropriate waste disposal and recycling provisions, reports to the governing body on the implementation and enforcement of the provisions of this article, and such other reports and activities as may be requested by the governing body.

- C. The Recycling Coordinator shall be required to comply with the Certification Requirements for Municipal Recycling Coordinators, as established by the State of New Jersey. The Recycling Coordinator shall have completed or be in the process of completing the requirements for certification as a "Certified Recycling Professional" (CRP) no later than January 13, 2012, as required by the New Jersey Recycling Enhancement Act.

§ 300-30. Enforcement; inspections.

- A. The duly appointed Municipal Recycling Coordinator, the Monmouth County Health Department, the Atlantic Highlands Code Enforcement Officer and the Atlantic Highlands Police Department are hereby jointly and severally empowered to inspect solid waste and recycling arrangements and compliance at local residences, businesses, schools and institutions, and to enforce the provisions of this article, by issuance of warnings, notices, summonses and complaints. A typical inspection may consist of sorting through containers and opening bagged solid wastes to detect the presence of recyclable materials.
- B. The authorized inspector may, in his or her discretion, issue a warning rather than a summons following an initial inspection(s), with a follow up visit to determine compliance within a stated period of time.

§ 300-31. Violations and penalties.

- A. Violation or noncompliance with any of the provisions of this article, or the rules and regulations promulgated hereunder, shall be punishable by a fine as follows:
- (1) For a first offense: \$25 to \$100.
 - (2) For a second offense: \$50 to \$200.
 - (3) For third and subsequent offense: \$250 to \$1,500 and/or the performance of community service in the recycling program, for a period not to exceed 90 days.
- B. Each day such violation or neglect is committed or permitted to continue shall constitute a separate offense and be punishable as such.
- C. Fines levied and collected in Municipal Court pursuant to the provisions of this article shall be deposited into the Municipal Recycling Trust Fund. Monies in the Municipal Recycling Trust Fund shall be used for the expenses of the municipal recycling program.

Chapter 303**SPECIAL EVENTS**

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 5-25-2005 by Ord. No. 12-2005. Amendments noted where applicable.]

GENERAL REFERENCES

Special Events Committee — See Ch. 5, Art. V.

§ 303-1. Committee approval required.

- A. All organizations, whether Borough recognized and supported or not, that request the use of municipal facilities, roads, lands, equipment, services and finances for special events, must obtain the approval from the Special Events Committee.
- B. There shall be a nonrefundable application fee as provided in Chapter 168, Article II, that shall be paid to the Borough of Atlantic Highlands and submitted with the application requesting permission to hold a special event. The application fee may be waived at the sole discretion of the Committee.¹⁵¹
- C. A application developed by the Committee in regard to special events in the Borough of Atlantic Highlands shall be obtained from the Secretary of the Committee by the sponsor of a special event. The application shall be completed in full by the vent sponsor, signed and submitted to the Secretary of the Committee, setting forth the date, time and place of the event, and the Borough of Atlantic Highlands' services and facilities required for the staging of the special event.
- D. The event sponsor shall provide a certificate of insurance showing sufficient coverage, as determined by the Committee, and naming the Borough of Atlantic Highlands and its agents as an additional insured party. The event sponsor will also provide a hold harmless and indemnity agreement to the Borough in regard to any liability for injury to persons or property.
- E. The event sponsor shall deposit with the Borough of Atlantic Highlands an amount of money, to be determined by the Committee, which will be held in escrow by the Borough, for the Borough's use to pay for any Borough services or facilities for the special event. The sponsor of the special event shall be responsible to pay any amount due and owing the Borough for the use of services or facilities for the event over and above the amount of escrow.
- F. The applicant, prior to the issuance of a permit, shall:
 - (1) Accept the terms and conditions set by the Committee.
 - (2) Accept the estimated costs.
 - (3) Make all necessary deposits of escrow.

151.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 303-2. Violations and penalties.¹⁵²

Violations shall be punishable as provided in Chapter 1, Article II, General Penalty.

152.Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ATLANTIC HIGHLANDS CODE

Chapter 306

STORMWATER CONTROL

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Uniform construction codes — See Ch. 136.

Flood damage prevention — See Ch. 183.

Development regulations — See Ch. 150.

Stormwater management — See Ch. 311.

Fire prevention — See Ch. 178.

ARTICLE I

Illicit Connections**[Adopted 11-30-2005 by Ord. No. 23-2005]****§ 306-1. Purpose.**

The purpose of this article is to prohibit illicit connections to the municipal separate storm sewer system(s) operated by the Borough of Atlantic Highlands, so as to protect public health, safety and welfare, and to prescribe penalties for the failure to comply.

§ 306-2. Definitions.

For the purpose of this article, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The definitions below are the same as or based on corresponding definitions in the New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A-1.2.

DOMESTIC SEWAGE — Waste and wastewater from humans or household operations.

ILLICIT CONNECTION — Any physical or nonphysical connection that discharges domestic sewage, noncontact cooling water, process wastewater, or other industrial waste (other than stormwater) to the municipal separate storm sewer system operated by the Borough of Atlantic Highlands, unless that discharge is authorized under a NJPDES permit other than the Tier A Municipal Stormwater General Permit (NJPDES Permit Number NJ0141852). Nonphysical connections may include, but are not limited to, leaks, flows, or overflows into the municipal separate storm sewer system.

INDUSTRIAL WASTE — Nondomestic waste, including, but not limited to, those pollutants regulated under Section 307(a), (b), or (c) of the Federal Clean Water Act [33 U.S.C. § 1317(a), (b), or (c)].

MUNICIPAL SEPARATE STORM SEWER SYSTEM — A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is owned or operated by the Borough of Atlantic Highlands or other public body, and is designed and used for collecting and conveying stormwater.

NJPDES PERMIT — A permit issued by the New Jersey Department of Environmental Protection to implement the New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A.

NONCONTACT COOLING WATER — Water used to reduce temperature for the purpose of cooling. Such waters do not come into direct contact with any raw material, intermediate product (other than heat) or finished product. Noncontact cooling water may, however, contain algacides, or biocides to control fouling of equipment such as heat exchangers, and/or corrosion inhibitors.

PERSON — Any individual, corporation, company, partnership, firm, association, or political subdivision of this state subject to municipal jurisdiction.

PROCESS WASTEWATER — Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. Process wastewater includes, but is not limited to, leachate and cooling water other than noncontact cooling water.

STORMWATER — Water resulting from precipitation (including rain and snow) that runs off the land's

surface, is transmitted to the subsurface, is captured by separate storm sewers or other sewerage or drainage facilities, or is conveyed by snow-removal equipment.

§ 306-3. Prohibited conduct.

No person shall discharge or cause to be discharged through an illicit connection to the municipal separate storm sewer system operated by the Borough of Atlantic Highlands any domestic sewage, noncontact cooling water, process wastewater, or other industrial waste (other than stormwater).

§ 306-4. Enforcement.

The Police Department and/or Code Enforcement Officer of the Borough of Atlantic Highlands shall enforce this article.

§ 306-5. Violations and penalties.

Any person(s) who is found to be in violation of the provisions of this article shall be subject to a fine not to exceed \$1,500.

ARTICLE II
Improper Waste Disposal
[Adopted 11-30-2005 by Ord. No. 25-2005]

§ 306-6. Purpose.

The purpose of this article is to prohibit the spilling, dumping, or disposal of materials other than stormwater to the municipal separate storm sewer system operated by the Borough of Atlantic Highlands, so as to protect public health, safety and welfare, and to prescribe penalties for the failure to comply.

§ 306-7. Definitions.

For the purpose of this article, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

MUNICIPAL SEPARATE STORM SEWER SYSTEM — A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is owned or operated by the Borough of Atlantic Highlands or other public body, and is designed and used for collecting and conveying stormwater.

PERSON — Any individual, corporation, company, partnership, firm, association, or political subdivision of this state subject to municipal jurisdiction.

STORMWATER — Water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface, is captured by separate storm sewers or other sewerage or drainage facilities, or is conveyed by snow-removal equipment.

§ 306-8. Prohibited conduct.

The spilling, dumping, or disposal of materials other than stormwater to the municipal separate storm sewer system operated by the Borough of Atlantic Highlands is prohibited. The spilling, dumping, or disposal of materials other than stormwater in such a manner as to cause the discharge of pollutants to the municipal separate storm sewer system is also prohibited.

§ 306-9. Exceptions to prohibition.¹⁵³

The provisions of this article shall not apply to the following:

- A. Water line flushing and discharges from potable water sources.
- B. Uncontaminated groundwater (e.g., infiltration, crawl space or basement sump pumps, foundation or footing drains, rising groundwaters).
- C. Air-conditioning condensate (excluding contact and noncontact cooling water).
- D. Irrigation water (including landscape and lawn watering runoff).
- E. Flows from springs, riparian habitats and wetlands, water reservoir discharges and diverted stream

153.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

flows.

- F. Residential car washing water, and residential swimming pool discharges.
- G. Sidewalk, driveway and street wash water.
- H. Flows from fire-fighting activities.
- I. Flows from rinsing of the following equipment with clean water:
 - (1) Beach maintenance equipment immediately following their use for their intended purposes; and
 - (2) Equipment used in the application of salt and deicing materials immediately following salt and deicing material applications. Prior to rinsing with clean water, all residual salt and deicing materials must be removed from equipment and vehicles to the maximum extent practicable using dry cleaning methods (e.g., shoveling and sweeping). Recovered materials are to be returned to storage for reuse or properly discarded. Rinsing of equipment, as noted in the above situation, is limited to exterior, undercarriage, and exposed parts and does not apply to engines or other enclosed machinery.

§ 306-10. Enforcement.

The Police Department and/or Code Enforcement Officer of the Borough of Atlantic Highlands shall enforce this article.

§ 306-11. Violations and penalties.¹⁵⁴

Any person(s) who continues to be in violation of the provisions of this article, after being duly notified, shall be subject to a penalty as provided in Chapter 1, Article II, General Penalty.

154.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE III

Private Storm Drain Inlet Retrofitting
[Adopted 6-10-2009 by Ord. No. 08-2009]**§ 306-12. Purpose.**¹⁵⁵

The purpose of this article is to require the retrofitting of existing storm drain inlets which are in direct contact with repaving, repairing, reconstruction, or resurfacing or alterations of facilities on private property, to prevent the discharge of solids and floatables (such as plastic bottles, cans, food wrappers and other litter) to the municipal separate storm sewer system(s) operated by the Borough of Atlantic Highlands so as to protect public health, safety and welfare, and to prescribe penalties for the failure to comply.

§ 306-13. Definitions.

For the purpose of this article, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) — A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is owned or operated by the Borough of Atlantic Highlands or other public body, and is designed and used for collecting and conveying stormwater.

PERSON — Any individual, corporation, company, partnership, firm, association, or political subdivision of this state subject to municipal jurisdiction.

STORM DRAIN INLET — An opening in a storm drain used to collect stormwater runoff and includes, but is not limited to, a grate inlet, curb-opening inlet, slotted inlet, and combination inlet.

WATERS OF THE STATE — The ocean and its estuaries, all springs, streams and bodies of surface or groundwater, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

§ 306-14. Prohibited conduct.

No person in control of private property (except a residential lot with one single-family house) shall authorize the repaving, repairing (excluding the repair of individual potholes), resurfacing (including top coating or chip sealing with asphalt emulsion or a thin base of hot bitumen), reconstructing or altering any surface that is in direct contact with an existing storm drain inlet on that property unless the storm drain inlet either:

- A. Already meets the design standard below to control passage of solid and floatable materials; or
- B. Is retrofitted or replaced to meet the standard in § 306-15 below prior to the completion of the project.

§ 306-15. Design standard.

Storm drain inlets identified in § 306-14 above shall comply with the following standard to control passage of solid and floatable materials through storm drain inlets. For purposes of this section, "solid and

¹⁵⁵Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

floatable materials" means sediment, debris, trash, and other floating, suspended, or settle able solids. (For exemptions to this standard, see Subsection C below.)

A. Grates.

- (1) Design engineers shall use either of the following grates whenever they use a grate in pavement or another ground surface to collect stormwater from that surface into a storm drain or surface water body under that grate:
 - (a) The New Jersey Department of Transportation (NJDOT) bicycle-safe grate, which is described in Chapter 2.4 of the NJDOT Bicycle Compatible Roadways and Bikeways Planning and Design Guidelines (April 1996); or
 - (b) A different grate, if each individual clear space in that grate has an area of no more than seven square inches, or is no greater than 0.5 inch across the smallest dimension.
- (2) Examples of grates subject to this standard include grates in grate inlets, the grate portion (non-curb-opening portion) of combination inlets, grates on storm sewer manholes, ditch grates, trench grates, and grates of spacer bars in slotted drains. Examples of ground surfaces include surfaces of roads (including bridges), driveways, parking areas, bikeways, plazas, sidewalks, lawns, fields, open channels, and stormwater basin floors.

B. Whenever design engineers use a curb-opening inlet, the clear space in that curb opening (or each individual clear space, if the curb opening has two or more clear spaces) shall have an area of no more than seven square inches, or be no greater than two inches across the smallest dimension.

C. This standard does not apply:

- (1) Where the municipal engineer agrees that this standard would cause inadequate hydraulic performance that could not practicably be overcome by using additional or larger storm drain inlets that meet these standards;
- (2) Where flows are conveyed through any device (e.g., end-of-pipe netting facility, manufactured treatment device, or a catch basin hood) that is designed, at a minimum, to prevent delivery of all solid and floatable materials that could not pass through one of the following:
 - (a) A rectangular space 4 5/8 inches long and 1 1/2 inches wide (this option does not apply for outfall netting facilities); or
 - (b) A bar screen having a bar spacing of 0.5 inch.
- (3) Where flows are conveyed through a trash rack that has parallel bars with one-inch spacing between the bars; or
- (4) Where the New Jersey Department of Environmental Protection determines, pursuant to the New Jersey Register of Historic Places Rules at N.J.A.C. 7:4-7.2(c), that action to meet this standard is an undertaking that constitutes an encroachment or will damage or destroy the New Jersey Register listed historic property.

§ 306-16. Enforcement.

This article shall be enforced by the Police Department, Construction Official and/or Code Enforcement Officer of Borough of Atlantic Highlands.

§ 306-17. Violations and penalties.

Any person(s) who is found to be in violation of the provisions of this article shall be subject to a fine not to exceed \$2,000 for each storm drain inlet that is not retrofitted to meet the design standard.

Chapter 311**STORMWATER CONTROL**

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 10-24-2007 by Ord. No. 23-2007; amended in its entirety 6-13-2024 by Ord. No. 11-2024. Amendments noted where applicable.]

§ 311-1. Scope and purpose.

- A. Policy statement. Flood control, groundwater recharge, and pollutant reduction shall be achieved through the use of stormwater management measures, including green infrastructure best management practices (GI BMPs) and nonstructural stormwater management strategies. GI BMPs and low-impact development (LID) should be utilized to meet the goal of maintaining natural hydrology to reduce stormwater runoff volume, reduce erosion, encourage infiltration and groundwater recharge, and reduce pollution. GI BMPs and LID should be developed based upon physical site conditions and the origin, nature and the anticipated quantity, or amount, of potential pollutants. Multiple stormwater management BMPs may be necessary to achieve the established performance standards for water quality, quantity, and groundwater recharge.
- B. Purpose. The purpose of this chapter is to establish minimum stormwater management requirements and controls for "major development," and "minor development" as defined herein, and to implement the most recent requirements of the New Jersey Stormwater Management Rules at N.J.A.C. 7:8 for all areas of the Borough. In the event of conflict with any provision of this chapter, the more restrictive provisions or higher standard shall govern.
- C. Applicability.
 - (1) This chapter shall be applicable to the following major developments:
 - (a) Nonresidential major developments; and
 - (b) Aspects of residential major developments that are not preempted by the Residential Site Improvement Standards at N.J.A.C. 5:21.
 - (2) This chapter shall also be applicable to all major developments undertaken by the Borough of Atlantic Highlands.
 - (3) An application required by ordinance pursuant to § 311-1C(1) above that has been submitted prior to June 13, 2024, shall be subject to the stormwater management requirements in effect on June 12, 2024.
 - (4) An application required by ordinance for approval pursuant to § 311-1C(1) above that has been submitted on or after March 2, 2021, but prior to June 13, 2024, shall be subject to the stormwater management requirements in effect on June 12, 2024.
 - (5) Notwithstanding any rule to the contrary, a major development for any public roadway or railroad project conducted by a public transportation entity that has determined a preferred alternative or reached an equivalent milestone before July 17, 2023, shall be subject to the stormwater management requirements in effect prior to July 17, 2023.
- D. Compatibility with other permit and ordinance requirements.

- (1) Development approvals issued pursuant to this chapter are to be considered an integral part of development approvals and do not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated by any other applicable code, rule, act, or ordinance. In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.
- (2) This chapter is not intended to interfere with, abrogate, or annul any other ordinances, rule or regulation, statute, or other provision of law except that, where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, the more restrictive provisions or higher standards shall control.

§ 311-2. Definitions.

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The definitions below are the same as or based on the corresponding definitions in the Stormwater Management Rules at N.J.A.C. 7:8-1.2.

CAFRA CENTERS, CORES OR NODES — Those areas with boundaries incorporated by reference or revised by the Department in accordance with N.J.A.C. 7:7-13.16.

CAFRA PLANNING MAP — The map used by the Department to identify the location of Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes. The CAFRA Planning Map is available on the Department's Geographic Information System (GIS).

COMMUNITY BASIN — An infiltration system, sand filter designed to infiltrate, standard constructed wetland, or wet pond, established in accordance with N.J.A.C. 7:8-4.2(c)14, that is designed and constructed in accordance with the New Jersey Stormwater Best Management Practices Manual, or an alternate design, approved in accordance with N.J.A.C. 7:8-5.2(g), for an infiltration system, sand filter designed to infiltrate, standard constructed wetland, or wet pond and that complies with the requirements of this chapter.

COMPACTION — The increase in soil bulk density.

CONTRIBUTORY DRAINAGE AREA — The area from which stormwater runoff drains to a stormwater management measure, not including the area of the stormwater management measure itself.

CORE — A pedestrian-oriented area of commercial and civic uses serving the surrounding municipality, generally including housing and access to public transportation.

COUNTY REVIEW AGENCY — An agency designated by the County Commissioners to review municipal stormwater management plans and implementing ordinance(s). The county review agency may either be:

- A. A county planning agency; or
- B. A county water resource association created under N.J.S.A. 58:16A-55.5, if the ordinance or resolution delegates authority to approve, conditionally approve, or disapprove municipal stormwater management plans and implementing ordinances.

DEPARTMENT — The Department of Environmental Protection.

DESIGN ENGINEER — A person professionally qualified and duly licensed in New Jersey to perform engineering services that may include, but not necessarily be limited to, development of project requirements, creation and development of project design and preparation of drawings and specifications.

DESIGNATED CENTER — A State Development and Redevelopment Plan Center as designated by the State Planning Commission such as urban, regional, town, village, or hamlet.

DEVELOPMENT —

- A. The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlarge-enlargement of any building or structure, 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 is required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.
- B. In the case of development of agricultural land, "development" means any activity that requires a state permit, any activity reviewed by the County Agricultural Board (CAB) and the State Agricultural Development Committee (SADC), and municipal review of any activity not exempted by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.

DISTURBANCE — The placement or reconstruction of impervious surface or motor vehicle surface, or exposure and/or movement of soil or bedrock or clearing, cutting, or removing of vegetation. Milling and repaving is not considered disturbance for the purposes of this definition.

DRAINAGE AREA — A geographic area within which stormwater, sediments, or dissolved materials drain to a particular receiving water body or to a particular point along a receiving water body.

EMPOWERMENT NEIGHBORHOODS — Neighborhoods designated by the Urban Coordinating Council "in consultation and conjunction with" the New Jersey Redevelopment Authority pursuant to N.J.S.A. 55:19-69.

ENVIRONMENTALLY CONSTRAINED AREA — The following areas where the physical alteration of the land is in some way restricted, either through regulation, easement, deed restriction or ownership, such as: wetlands, floodplains, threatened and endangered species sites or designated habitats, and parks and preserves. Habitats of endangered or threatened species are identified using the Department's Landscape Project as approved by the Department's Endangered and Nongame Species Program.

ENVIRONMENTALLY CRITICAL AREA — An area or feature which is of significant environmental value, including but not limited to stream corridors, natural heritage priority sites, habitats of endangered or threatened species, large areas of contiguous open space or upland forest, steep slopes, and wellhead protection and groundwater recharge areas. Habitats of endangered or threatened species are identified using the Department's Landscape Project as approved by the Department's Endangered and Nongame Species Program.

EROSION — The detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

GREEN INFRASTRUCTURE — A stormwater management measure that manages stormwater close to its source by:

- A. Treating stormwater runoff through infiltration into subsoil;
- B. Treating stormwater runoff through filtration by vegetation or soil; or
- C. Storing stormwater runoff for reuse.

HUC 14 or HYDROLOGIC UNIT CODE 14 — An area within which water drains to a particular receiving

surface water body, also known as a "subwatershed," which is identified by a fourteen-digit hydrologic unit boundary designation, delineated within New Jersey by the United States Geological Survey.

IMPERVIOUS SURFACE — A surface that has been covered with a layer of material so that it is highly resistant to infiltration by water.

INFILTRATION — The process by which water seeps into the soil from precipitation.

LEAD PLANNING AGENCY — One or more public entities having stormwater management planning authority designated by the regional stormwater management planning committee pursuant to N.J.A.C. 7:8-3.2, that serves as the primary representative of the committee.

LOW-IMPACT DEVELOPMENT TECHNIQUES — Utilizing strategies and measures that manage stormwater runoff quantity and quality in the absence of structural stormwater measures, such as minimizing site disturbance, preserving natural vegetation and other important site features such as forests and especially core forests, reducing and disconnecting impervious cover, minimizing proposed ground slopes, utilizing native vegetation, minimizing turf grass lawns, revegetating areas, increasing time of concentration, and maintaining and enhancing natural drainage features and characteristics.

MAJOR DEVELOPMENT —

- A. An individual development, as well as multiple developments that individually or collectively result in:
 - (1) The disturbance of 1/2 acre or more of land since February 2, 2004;
 - (2) The creation of 5,000 square feet or more of regulated impervious surface since February 2, 2004;
 - (3) The creation of 5,000 square feet or more of regulated motor vehicle surface since March 2, 2021; or
 - (4) A combination of Subsection A(2) and (3) above that totals an area of 5,000 square feet or more. The same surface shall not be counted twice when determining if the combination area equals 5,000 square feet or more.
- B. Major development includes all developments that are part of a common plan of development or sale (for example, phased residential development) that collectively or individually meet any one or more of Subsection A(1), (2), (3) or (4) above. Projects undertaken by any government agency that otherwise meet the definition of "major development" but which do not require approval under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., are also considered "major development."

MINOR DEVELOPMENT — Any development that results in an increase of 1,000 square feet or more of impervious surface or which results in a disturbance of 5,000 square feet or more of land but does not meet the definition of a major development.

MOTOR VEHICLE — Land vehicles propelled other than by muscular power, such as automobiles, motorcycles, autocycles, and low-speed vehicles. For the purposes of this definition, "motor vehicle" does not include farm equipment, snowmobiles, all-terrain vehicles, motorized wheelchairs, go-carts, gas buggies, golf carts, ski-slope grooming machines, or vehicles that run only on rails or tracks.

MOTOR VEHICLE SURFACE — Any pervious or impervious surface that is intended to be used by motor vehicles and/or aircraft, and is directly exposed to precipitation, including, but not limited to, driveways, parking areas, parking garages, roads, racetracks, and runways.

MUNICIPALITY — Any city, borough, town, township, or village.

NEW JERSEY STORMWATER BEST MANAGEMENT PRACTICES (BMP) MANUAL or BMP MANUAL — The manual maintained by the Department providing, in part, design specifications, removal rates, calculation methods, and soil testing procedures approved by the Department as being capable of contributing to the achievement of the stormwater management standards specified in this chapter. The BMP Manual is periodically amended by the Department as necessary to provide design specifications on additional best management practices and new information on already included practices reflecting the best available current information regarding the particular practice and the Department's determination as to the ability of that best management practice to contribute to compliance with the standards contained in this chapter. Alternative stormwater management measures, removal rates, or calculation methods may be utilized, subject to any limitations specified in this chapter, provided the design engineer demonstrates to the municipality, in accordance with § 311-4F of this chapter and N.J.A.C. 7:8-5.2(g), that the proposed measure and its design will contribute to achievement of the design and performance standards established by this chapter.

NODE — An area designated by the State Planning Commission concentrating facilities and activities which are not organized in a compact form.

NUTRIENT — A chemical element or compound, such as nitrogen or phosphorus, which is essential to and promotes the development of organisms.

PERSON — Any individual, corporation, company, partnership, firm, association, political subdivision of this state and any state, interstate or federal agency.

POLLUTANT — Any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, medical wastes, radioactive substance [except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)], thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, agricultural, and construction waste or runoff, or other residue discharged directly or indirectly to the land, groundwaters or surface waters of the state, or to a domestic treatment works. "Pollutant" includes both hazardous and nonhazardous pollutants.

PUBLIC ROADWAY OR RAILROAD — A pathway for use by motor vehicles or trains that is intended for public use and is constructed by, or on behalf of, a public transportation entity. A public roadway or railroad does not include a roadway or railroad constructed as part of a private development, regardless of whether the roadway or railroad is ultimately to be dedicated to and/or maintained by a governmental entity.

PUBLIC TRANSPORTATION ENTITY — A federal, state, county, or municipal government, an independent state authority, or a statutorily authorized public-private partnership program pursuant to P.L. 2018, c. 90 (N.J.S.A. 40A:11-52 et seq.), that performs a public roadway or railroad project that includes new construction, expansion, reconstruction, or improvement of a public roadway or railroad.

RECHARGE — The amount of water from precipitation that infiltrates into the ground and is not evapotranspired.

REGULATED IMPERVIOUS SURFACE — Any of the following, alone or in combination:

- A. A net increase of impervious surface;
- B. The total area of impervious surface collected by a new stormwater conveyance system (for the purpose of this definition, a "new stormwater conveyance system" is a stormwater conveyance system that is constructed where one did not exist immediately prior to its construction or an existing system for which a new discharge location is created);

- C. The total area of impervious surface proposed to be newly collected by an existing stormwater conveyance system; and/or
- D. The total area of impervious surface collected by an existing stormwater conveyance system where the capacity of that conveyance system is increased.

REGULATED MOTOR VEHICLE SURFACE — Any of the following, alone or in combination:

- A. The total area of motor vehicle surface that is currently receiving water;
- B. A net increase in motor vehicle surface; and/or quality treatment either by vegetation or soil, by an existing stormwater management measure, or by treatment at a wastewater treatment plant, where the water quality treatment will be modified or removed.

SEDIMENT — Solid material, mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water or gravity as a product of erosion.

SITE — The lot or lots upon which a major development is to occur or has occurred.

SOIL — All unconsolidated mineral and organic material of any origin.

STATE DEVELOPMENT AND REDEVELOPMENT PLAN METROPOLITAN PLANNING AREA (PA1) — An area delineated on the State Plan Policy Map and adopted by the State Planning Commission that is intended to be the focus for much of the state's future redevelopment and revitalization efforts.

STATE PLAN POLICY MAP — The geographic application of the State Development and Redevelopment Plan's goals and statewide policies, and the official map of these goals and policies.

STORMWATER — Water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface, or is captured by separate storm sewers or other sewage or drainage facilities, or conveyed by snow removal equipment.

STORMWATER MANAGEMENT BMP — An excavation or embankment and related areas designed to retain stormwater runoff. A stormwater management BMP may either be normally dry (that is, a detention basin or infiltration system), retain water in a permanent pool (a retention basin), or be planted mainly with wetland vegetation (most constructed stormwater wetlands).

STORMWATER MANAGEMENT MEASURE — Any practice, technology, process, program, or other method intended to control or reduce stormwater runoff and associated pollutants, or to induce or control the infiltration or groundwater recharge of stormwater or to eliminate illicit or illegal nonstormwater discharges into stormwater conveyances.

STORMWATER MANAGEMENT PLANNING AGENCY — A public body authorized by legislation to prepare stormwater management plans.

STORMWATER MANAGEMENT PLANNING AREA — The geographic area for which a stormwater management planning agency is authorized to prepare stormwater management plans, or a specific portion of that area identified in a stormwater management plan prepared by that agency.

STORMWATER RUNOFF — Water flow on the surface of the ground or in storm sewers, resulting from precipitation.

TIDAL FLOOD HAZARD AREA — A flood hazard area in which the flood elevation resulting from the two-, ten-, or 100-year storm, as applicable, is governed by tidal flooding from the Atlantic Ocean. Flooding in a tidal flood hazard area may be contributed to, or influenced by, stormwater runoff from inland areas, but the depth of flooding generated by the tidal rise and fall of the Atlantic Ocean is greater than flooding from any fluvial sources. In some situations, depending upon the extent of the storm surge

from a particular storm event, a flood hazard area may be tidal in the 100-year storm, but fluvial in more frequent storm events.

URBAN COORDINATING COUNCIL EMPOWERMENT NEIGHBORHOOD — A neighborhood given priority access to state resources through the New Jersey Redevelopment Authority.

URBAN ENTERPRISE ZONES — A zone designated by the New Jersey Enterprise Zone Authority pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq.

URBAN REDEVELOPMENT AREA — Previously developed portions of areas:

- A. Delineated on the State Plan Policy Map (SPPM) as the Metropolitan Planning Area (PA1), Designated Centers, Cores or Nodes;
- B. Designated as CAFRA Centers, Cores or Nodes;
- C. Designated as Urban Enterprise Zones; and
- D. Designated as Urban Coordinating Council Empowerment Neighborhoods.

WATER CONTROL STRUCTURE — A structure within, or adjacent to, a water, which intentionally or coincidentally alters the hydraulic capacity, the flood elevation resulting from the two-, ten-, or 100-year storm, flood hazard area limit, and/or floodway limit of the water. Examples of a water control structure may include a bridge, culvert, dam, embankment, ford (if above grade), retaining wall, and weir.

WATERS OF THE STATE — The ocean and its estuaries, all springs, streams, wetlands, and bodies of surface water or groundwater, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

WETLANDS or WETLAND — An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as "hydrophytic vegetation."

§ 311-3. Design and performance standards for stormwater management measures.

- A. Stormwater management measures for major development shall be designed to provide erosion control, groundwater recharge, stormwater runoff quantity control, and stormwater runoff quality treatment as follows:
 - (1) The minimum standards for erosion control are those established under the Soil and Sediment Control Act, N.J.S.A. 4:24-39 et seq., and implementing rules at N.J.A.C. 2:90.
 - (2) The minimum standards for groundwater recharge, stormwater quality, and stormwater runoff quantity shall be met by incorporating green infrastructure.
- B. The standards in this chapter apply only to new major development and are intended to minimize the impact of stormwater runoff on water quality and water quantity in receiving water bodies and maintain groundwater recharge. The standards do not apply to new major development to the extent that alternative design and performance standards are applicable under a regional stormwater management plan or water quality management plan adopted in accordance with Department rules.
- C. In the event the proposed development is considered "minor development" as defined in this chapter, the applicant shall comply with the provisions applicable to such developments.
- D. When a proposed development is not considered a "major development" or a "minor development,"

as defined herein, the applicant's engineer shall demonstrate that post-development runoff will not cause an adverse impact to adjacent properties of record.

§ 311-4. Stormwater management requirements for major development.

- A. The development shall incorporate a maintenance plan for the stormwater management measures incorporated into the design of a major development in accordance with § 311-11.
- B. Stormwater management measures shall avoid adverse impacts of concentrated flow on habitat for threatened and endangered species as documented in the Department's Landscape Project or Natural Heritage Database established under N.J.S.A. 13:1B-15.147 through 13:1B-15.150, particularly *Helonias bullata* (swamp pink) and/or *Clemmys muhlenbergii* (bog turtle).
- C. The following linear development projects are exempt from the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity requirements of § 311-4P, Q and R:
 - (1) The construction of an underground utility line provided that the disturbed areas are revegetated upon completion;
 - (2) The construction of an aboveground utility line provided that the existing conditions are maintained to the maximum extent practicable; and
 - (3) The construction of a public pedestrian access, such as a sidewalk or trail with a maximum width of 14 feet, provided that the access is made of permeable material and the subsurface of the path is not compacted as part of the construction accessway.
- D. A waiver from strict compliance from the green infrastructure, groundwater recharge, stormwater runoff quality, and stormwater runoff quantity requirements of § 311-4O, P, Q and R may be obtained for the enlargement of an existing public roadway or railroad; or the construction or enlargement of a public pedestrian access, provided that the following conditions are met:
 - (1) The applicant demonstrates that there is a public need for the project that cannot be accomplished by any other means;
 - (2) The applicant demonstrates, through an alternatives analysis, that through the use of stormwater management measures, the option selected complies with the requirements of § 311-4O, P, Q and R to the maximum extent practicable;
 - (3) The applicant demonstrates that, in order to meet the requirements of § 311-4O, P, Q and R, existing structures currently in use, such as homes and buildings, would need to be condemned; and
 - (4) The applicant demonstrates that it does not own or have other rights to areas, including the potential to obtain through condemnation lands not falling under § 311-4D(3) above within the upstream drainage area of the receiving stream, that would provide additional opportunities to mitigate the requirements of § 311-4O, P, Q and R that were not achievable on-site.
- E. Tables 1 through 3 below summarize the ability of stormwater best management practices identified and described in the New Jersey Stormwater Best Management Practices Manual to satisfy the green infrastructure, groundwater recharge, stormwater runoff quality and stormwater runoff quantity standards specified in § 311-4O, P, Q and R. When designed in accordance with the most current version of the New Jersey Stormwater Best Management Practices Manual, the stormwater management measures found at N.J.A.C. 7:8-5.2(f), Tables 5-1, 5-2 and 5-3, and listed below in

Tables 1, 2 and 3 are presumed to be capable of providing stormwater controls for the design and performance standards as outlined in the tables below. Upon amendments of the New Jersey Stormwater Best Management Practices to reflect additions or deletions of BMPs meeting these standards, or changes in the presumed performance of BMPs designed in accordance with the New Jersey Stormwater BMP Manual, the Department shall publish in the New Jersey Registers a notice of administrative change revising the applicable table. The most current version of the BMP Manual can be found on the Department's website at <https://dep.nj.gov/stormwater/bmp-manual/>.

- F. Where the BMP tables in the NJ Stormwater Management Rule are different due to updates or amendments with the tables in this chapter, the BMP tables in the Stormwater Management Rule at N.J.A.C. 7:8-5.2(f) shall take precedence.

Table 1 Green Infrastructure BMPs for Groundwater Recharge, Stormwater Runoff Quality, and/or Stormwater Runoff Quantity				
Best Management Practice	Stormwater Runoff Quality TSS Removal Rate (percent)	Stormwater Runoff Quantity	Groundwater Recharge	Minimum Separation from Seasonal High Water Table (feet)
Cistern	0	Yes	No	—
Dry well ^(a)	0	No	Yes	2
Grass swale	50 or less	No	No	2 ^(c) 1 ^(f)
Green roof	0	Yes	No	—
Manufactured treatment device ^{(a)(g)}	50 or 80	No	No	Dependent upon the device
Pervious paving system ^(a)	80	Yes	Yes ^(b) No ^(c)	2 ^(b) 1 ^(c)
Small-scale bioretention basin ^(a)	80 or 90	Yes	Yes ^(b) No ^(c)	2 ^(b) 1 ^(c)
Small-scale infiltration basin ^(a)	80	Yes	Yes	2
Small-scale sand filter	80	Yes	Yes	2
Vegetative filter strip	60-80	No	No	—

Table 2 Green Infrastructure BMPs for Stormwater Runoff Quantity (or for Groundwater Recharge and/or Stormwater Runoff Quality with a Waiver or Variance from N.J.A.C. 7:8-5.3)				
Best Management Practice	Stormwater Runoff Quality TSS Removal Rate (percent)	Stormwater Runoff Quantity	Groundwater Recharge	Minimum Separation from Seasonal High Water Table (feet)
Bioretention system	80 or 90	Yes	Yes ^(b) No ^(c)	2 ^(b) 1 ^(c)
Infiltration basin	80	Yes	Yes	2
Sand filter ^(b)	80	Yes	Yes	2
Standard constructed wetland	90	Yes	No	N/A
Wet pond ^(d)	50-90	Yes	No	N/A

Table 3 BMPs for Groundwater Recharge, Stormwater Runoff Quality, and/or Stormwater Runoff Quantity only with a Waiver or Variance from N.J.A.C. 7:8-5.3				
Best Management Practice	Stormwater Runoff Quality TSS Removal Rate (percent)	Stormwater Runoff Quantity	Groundwater Recharge	Minimum Separation from Seasonal High Water Table (feet)
Blue roof	0	Yes	No	N/A
Extended detention basin	40-60	Yes	No	1
Manufactured treatment device ^(h)	50 or 80	No	No	Dependent upon the device
Sand filter ^(c)	80	Yes	No	1
Subsurface gravel wetland	90	No	No	1
Wet pond	50-90	Yes	No	N/A

Notes to Tables 1, 2, and 3:

- (a) Subject to the applicable contributory drainage area limitation specified at § 311-40(2).
- (b) Designed to infiltrate into the subsoil.

Notes to Tables 1, 2, and 3:

- (c) Designed with underdrains.
 - (d) Designed to maintain at least a ten-foot-wide area of native vegetation along at least 50% of the shoreline and to include a stormwater runoff retention component designed to capture stormwater runoff for beneficial reuse, such as irrigation.
 - (e) Designed with a slope of less than 2%.
 - (f) Designed with a slope of equal to or greater than 2%.
 - (g) Manufactured treatment devices that meet the definition of "green infrastructure" at § 311-2.
 - (h) Manufactured treatment devices that do not meet the definition of "green infrastructure" at § 311-2.
- G. An alternative stormwater management measure, alternative removal rate, and/or alternative method to calculate the removal rate may be used if the design engineer demonstrates the capability of the proposed alternative stormwater management measure and/or the validity of the alternative rate or method to the municipality. A copy of any approved alternative stormwater management measure, alternative removal rate, and/or alternative method to calculate the removal rate shall be provided to the Department in accordance with § 311-7B. Alternative stormwater management measures may be used to satisfy the requirements at § 311-4O only if the measures meet the definition of "green infrastructure" at § 311-2. Alternative stormwater management measures that function in a similar manner to a BMP listed at § 311-4O(2) are subject to the contributory drainage area limitation specified at § 311-4O(2) for that similarly functioning BMP. Alternative stormwater management measures approved in accordance with this subsection that do not function in a similar manner to any BMP listed at § 311-4O(2) shall have a contributory drainage area less than or equal to 2.5 acres, except for alternative stormwater management measures that function similarly to cisterns, grass swales, green roofs, standard constructed wetlands, vegetative filter strips, and wet ponds, which are not subject to a contributory drainage area limitation. Alternative measures that function similarly to standard constructed wetlands or wet ponds shall not be used for compliance with the stormwater runoff quality standard unless a variance in accordance with N.J.A.C. 7:8-4.6 or a waiver from strict compliance in accordance with § 311-4D is granted from § 311-4O.
- H. Whenever the stormwater management design includes one or more BMPs that will infiltrate stormwater into subsoil, the design engineer shall assess the hydraulic impact on the groundwater table and design the site so as to avoid adverse hydraulic impacts. Potential adverse hydraulic impacts include, but are not limited to, exacerbating a naturally or seasonally high water table, so as to cause surficial ponding, flooding of basements, or interference with the proper operation of subsurface sewage disposal systems or other subsurface structures within the zone of influence of the groundwater mound, or interference with the proper functioning of the stormwater management measure itself.
- I. Design standards for stormwater management measures are as follows:
- (1) Stormwater management measures shall be designed to take into account the existing site conditions, including, but not limited to, environmentally critical areas; wetlands; flood-prone areas; slopes; depth to seasonal high water table; soil type, permeability, and texture; drainage area and drainage patterns; and the presence of solution-prone carbonate rocks (limestone);
 - (2) Stormwater management measures shall be designed to minimize maintenance, facilitate maintenance and repairs, and ensure proper functioning. Trash racks shall be installed at the

intake to the outlet structure, as appropriate, and shall have parallel bars with one-inch spacing between the bars to the elevation of the water quality design storm. For elevations higher than the water quality design storm, the parallel bars at the outlet structure shall be spaced no greater than 1/3 the width of the diameter of the orifice or 1/3 the width of the weir, with a minimum spacing between bars of one inch and a maximum spacing between bars of six inches. In addition, the design of trash racks must comply with the requirements of § 311-9C;

- (3) Stormwater management measures shall be designed, constructed, and installed to be strong, durable, and corrosion resistant. Measures that are consistent with the relevant portions of the Residential Site Improvement Standards at N.J.A.C. 5:21-7.3, 7.4, and 7.5 shall be deemed to meet this requirement;
 - (4) Stormwater management BMPs shall be designed to meet the minimum safety standards for stormwater management BMPs at § 311-9; and
 - (5) The size of the orifice at the intake to the outlet from the stormwater management BMP shall be a minimum of 2 1/2 inches in diameter.
 - (6) The bottom of any infiltration-based GI BMP shall be a minimum of two feet in elevation above the established seasonal high water table. If the GI BMP is located within 100 feet of a dwelling, swimming pool, septic system, or sanitary sewer main, a groundwater mounding analysis as outlined in the NJDEP BMP Manual, Chapter 13, shall be performed, in order to assess the hydraulic impact on the groundwater table and surrounding site features. Potential adverse hydraulic impacts include, but are not limited to, exacerbating a naturally or seasonally high water table, so as to cause surficial ponding, flooding of basements, or interference with the proper operation of subsurface sewage disposal systems or other subsurface structures within the zone of influence of the groundwater mound, or interference with the proper functioning of the stormwater management measure itself.
 - (7) Infiltration-based small-scale GI BMPs shall not be permitted to be constructed within 50 feet of one another, as measured horizontally from the edge of the infiltrating layer of each BMP, unless the design engineer can demonstrate that no other locations are feasible due to existing soil or environmental conditions on-site (e.g., due to the presence of poorly draining soils, wetlands, or other environmentally sensitive soils/areas). In such a circumstance, the design engineer shall demonstrate via groundwater mounding analysis that the basins can perform independently of each other and will not adversely affect each other's performance. The use of clay berms or other impermeable liners may be considered to achieve a hydraulic separation between basins.
 - (8) The design of a stormwater management system for any site shall begin with the assumption that it shall be addressed through the use of scattered GI BMPs. Consequently, small-scale GI BMPs shall not be incorporated into the design of large-scale BMPs unless the design engineer can demonstrate that no other layout is feasible due to existing soil or environmental conditions on-site (e.g., due to the presence of poorly draining soils, wetlands, or other environmentally sensitive soils/areas). A reduction in the amount of developable area shall not be considered sufficient justification for waiving this requirement.
 - (9) The language in this section should not be interpreted to discourage the use of green infrastructure BMPs as detailed in the NJ Stormwater BMP Manual.
- J. Manufactured treatment devices may be used to meet the requirements of this subchapter, provided the pollutant removal rates are verified by the New Jersey Corporation for Advanced Technology and

certified by the Department. Manufactured treatment devices that do not meet the definition of "green infrastructure" at § 311-2 may be used only under the circumstances described at § 311-4O(4).

- K. Any application for a new agricultural development that meets the definition of "major development" at § 311-2 shall be submitted to the Soil Conservation District for review and approval in accordance with the requirements at § 311-4O, P, Q and R and any applicable Soil Conservation District guidelines for stormwater runoff quantity and erosion control. For purposes of this subsection, "agricultural development" means land uses normally associated with the production of food, fiber, and livestock for sale. Such uses do not include the development of land for the processing or sale of food and the manufacture of agriculturally related products.
- L. If there is more than one drainage area, the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards at § 311-4P, Q and R shall be met in each drainage area, unless the runoff from the drainage areas converge on-site and no adverse environmental impact would occur as a result of compliance with any one or more of the individual standards being determined utilizing a weighted average of the results achieved for that individual standard across the affected drainage areas.
- M. Any stormwater management measure authorized under the municipal stormwater management plan or ordinance shall be reflected in a deed notice recorded in the office of the Monmouth County Clerk. A form of deed notice shall be submitted to the municipality for approval prior to filing. The deed notice shall contain a description of the stormwater management measure(s) used to meet the green infrastructure, groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards at § 311-4O, P, Q and R and shall identify the location of the stormwater management measure(s) in NAD 1983 State Plane New Jersey FIPS 2900 US feet or latitude and longitude in decimal degrees. The deed notice shall also reference the maintenance plan required to be recorded upon the deed pursuant to § 311-11B(5). Prior to the commencement of construction, proof that the above required deed notice has been filed shall be submitted to the municipality. Proof that the required information has been recorded on the deed shall be in the form of either a copy of the complete recorded document or a receipt from the Clerk or other proof of recordation provided by the recording office. However, if the initial proof provided to the municipality is not a copy of the complete recorded document, a copy of the complete recorded document shall be provided to the municipality within 180 calendar days of the authorization granted by the municipality.
- N. A stormwater management measure approved under the municipal stormwater management plan or ordinance may be altered or replaced with the approval of the municipality, if the municipality determines that the proposed alteration or replacement meets the design and performance standards pursuant to § 311-4 of this chapter and provides the same level of stormwater management as the previously approved stormwater management measure that is being altered or replaced. If an alteration or replacement is approved, a revised deed notice shall be submitted to the municipality for approval and subsequently recorded with the Office of the Monmouth County Clerk and shall contain a description and location of the stormwater management measure, as well as reference to the maintenance plan, in accordance with § 311-4M above. Prior to the commencement of construction, proof that the above required deed notice has been filed shall be submitted to the municipality in accordance with § 311-4M above.
- O. Green infrastructure standards.
 - (1) This subsection specifies the types of green infrastructure BMPs that may be used to satisfy the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards.
 - (2) To satisfy the groundwater recharge and stormwater runoff quality standards at § 311-4P and

Q, the design engineer shall utilize green infrastructure BMPs identified in Table 1 at § 311-4F and/or an alternative stormwater management measure approved in accordance with § 311-4G. The following green infrastructure BMPs are subject to the following maximum contributory drainage area limitations:

Best Management Practice	Maximum Contributory Drainage Area
Dry well	1 acre
Manufactured treatment device	2.5 acres
Pervious pavement systems	Area of additional inflow cannot exceed 3 times the area occupied by the BMP
Small-scale bioretention systems	2.5 acres
Small-scale infiltration basin	2.5 acres
Small-scale sand filter	2.5 acres

- (3) To satisfy the stormwater runoff quantity standards at § 311-4R, the design engineer shall utilize BMPs from Table 1 or from Table 2 and/or an alternative stormwater management measure approved in accordance with § 311-4G.
- (4) If a variance in accordance with N.J.A.C. 7:8-4.6 or a waiver from strict compliance in accordance with § 311-4D is granted from the requirements of this subsection, then BMPs from Table 1, 2, or 3, and/or an alternative stormwater management measure approved in accordance with § 311-4G may be used to meet the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards at § 311-4P, Q and R.
- (5) For separate or combined storm sewer improvement projects, such as sewer separation, undertaken by a government agency or public utility (for example, a sewerage company), the requirements of this subsection shall only apply to areas owned in fee simple by the government agency or utility, and areas within a right-of-way or easement held or controlled by the government agency or utility; the entity shall not be required to obtain additional property or property rights to fully satisfy the requirements of this subsection. Regardless of the amount of area of a separate or combined storm sewer improvement project subject to the green infrastructure requirements of this subsection, each project shall fully comply with the applicable groundwater recharge, stormwater runoff quality control, and stormwater runoff quantity standards at § 311-4P, Q and R, unless the project is granted a waiver from strict compliance in accordance with § 311-4D.

P. Groundwater recharge standards.

- (1) This subsection contains the minimum design and performance standards for groundwater recharge as follows.
- (2) The design engineer shall, using the assumptions and factors for stormwater runoff and groundwater recharge calculations at § 311-6, either:
 - (a) Demonstrate through hydrologic and hydraulic analysis that the site and its stormwater management measures maintain 100% of the average annual preconstruction groundwater recharge volume for the site; or

- (b) Demonstrate through hydrologic and hydraulic analysis that the increase of stormwater runoff volume from preconstruction to post-construction for the projected two-year storm, as defined and determined pursuant to § 311-6D of this chapter is infiltrated.
- (3) This groundwater recharge requirement does not apply to projects within the urban redevelopment area, or to projects subject to § 311-4P(4) below.
- (4) The following types of stormwater shall not be recharged:
 - (a) Stormwater from areas of high pollutant loading. High pollutant loading areas are areas in industrial and commercial developments where solvents and/or petroleum products are loaded/unloaded, stored, or applied; areas where pesticides are loaded/unloaded or stored; areas where hazardous materials are expected to be present in greater than "reportable quantities" as defined by the United States Environmental Protection Agency (EPA) at 40 CFR 302.4; areas where recharge would be inconsistent with Department-approved remedial action work plan approved pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C, or Department landfill closure plan and areas; and areas with high risks for spills of toxic materials, such as gas stations and vehicle maintenance facilities; and
 - (b) Industrial stormwater exposed to source material. "Source material" means any material(s) or machinery, located at an industrial facility, that is directly or indirectly related to process, manufacturing or other industrial activities, which could be a source of pollutants in any industrial stormwater discharge to groundwater. Source materials include, but are not limited to, raw materials; intermediate products; final products; waste materials; by-products; industrial machinery and fuels, and lubricants, solvents, and detergents that are related to process, manufacturing, or other industrial activities that are exposed to stormwater.

Q. Stormwater runoff quality standards.

- (1) This subsection contains the minimum design and performance standards to control stormwater runoff quality impacts of major development. Stormwater runoff quality standards are applicable when the major development results in an increase of 1/4 acre or more of regulated motor vehicle surface.
- (2) Stormwater management measures shall be designed to reduce the post-construction load of total suspended solids (TSS) in stormwater runoff generated from the water quality design storm as follows:
 - (a) Eighty percent TSS removal of the anticipated load, expressed as an annual average, shall be achieved for the stormwater runoff from the net increase of motor vehicle surface.
 - (b) If the surface is considered regulated motor vehicle surface because the water quality treatment for an area of motor vehicle surface that is currently receiving water quality treatment either by vegetation or soil, by an existing stormwater management measure, or by treatment at a wastewater treatment plant is to be modified or removed, the project shall maintain or increase the existing TSS removal of the anticipated load expressed as an annual average.
- (3) The requirement to reduce TSS does not apply to any stormwater runoff in a discharge regulated under a numeric effluent limitation for TSS imposed under the New Jersey Pollutant Discharge

Elimination System (NJPDES) rules, N.J.A.C. 7:14A, or in a discharge specifically exempt under a NJPDES permit from this requirement. Every major development, including any that discharge into a combined sewer system, shall comply with § 311-4Q(2) above, unless the major development is itself subject to a NJPDES permit with a numeric effluent limitation for TSS or the NJPDES permit to which the major development is subject exempts the development from a numeric effluent limitation for TSS.

- (4) Bioretention type systems such as bio-swales, small-scale bioretention basins, or manufactured biofilters are the preferred option over nonvegetated infiltration systems for achieving water quality for office, retail, institutional, and residential development, including single-family detached and single-family semidetached dwellings. Bioretention type systems should be considered for industrial applications where feasible.
- (5) The New Jersey water quality design storm is 1.25 inches of rainfall in two hours. Water quality calculations shall take into account the distribution of rain from the water quality design storm, as reflected in N.J.A.C. 7:8-5.5, Table 5-4, reproduced below as Table 4. The calculation of the volume of runoff may take into account the implementation of stormwater management measures.

Table 4
Water Quality Design Storm Distribution

Time (Minutes)	Cumulative Rainfall (inches)	Time (Minutes)	Cumulative Rainfall (inches)	Time (Minutes)	Cumulative Rainfall (inches)
1	0.00166	41	0.1728	81	1.0906
2	0.00332	42	0.1796	82	1.0972
3	0.00498	43	0.1864	83	1.1038
4	0.00664	44	0.1932	84	1.1104
5	0.00830	45	0.2000	85	1.1170
6	0.00996	46	0.2117	86	1.1236
7	0.01162	47	0.2233	87	1.1302
8	0.01328	48	0.2350	88	1.1368
9	0.01494	49	0.2466	89	1.1434
10	0.01660	50	0.2583	90	1.1500
11	0.01828	51	0.2783	91	1.1550
12	0.01996	52	0.2983	92	1.1600
13	0.02164	53	0.3183	93	1.1650
14	0.02332	54	0.3383	94	1.1700
15	0.02500	55	0.3583	95	1.1750
16	0.03000	56	0.4116	96	1.1800
17	0.03500	57	0.4650	97	1.1850

Table 4
Water Quality Design Storm Distribution

Time (Minutes)	Cumulative Rainfall (inches)	Time (Minutes)	Cumulative Rainfall (inches)	Time (Minutes)	Cumulative Rainfall (inches)
18	0.04000	58	0.5183	98	1.1900
19	0.04500	59	0.5717	99	1.1950
20	0.05000	60	0.6250	100	1.2000
21	0.05500	61	0.6783	101	1.2050
22	0.06000	62	0.7317	102	1.2100
23	0.06500	63	0.7850	103	1.2150
24	0.07000	64	0.8384	104	1.2200
25	0.07500	65	0.8917	105	1.2250
26	0.08000	66	0.9117	106	1.2267
27	0.08500	67	0.9317	107	1.2284
28	0.09000	68	0.9517	108	1.2300
29	0.09500	69	0.9717	109	1.2317
30	0.10000	70	0.9917	110	1.2334
31	0.10660	71	1.0034	111	1.2351
32	0.11320	72	1.0150	112	1.2367
33	0.11980	73	1.0267	113	1.2384
34	0.12640	74	1.0383	114	1.2400
35	0.13300	75	1.0500	115	1.2417
36	0.13960	76	1.0568	116	1.2434
37	0.14620	77	1.0636	117	1.2450
38	0.15280	78	1.0704	118	1.2467
39	0.15940	79	1.0772	119	1.2483
40	0.16600	80	1.0840	120	1.2500

- (6) If more than one BMP in series is necessary to achieve the required 80% TSS reduction for a site, the applicant shall utilize the following formula to calculate TSS reduction:

$$R = A + B - (A \times B)/100;$$

Where:

R = Total TSS percent load removal from application of both BMPs;

A = The TSS percent removal rate applicable to the first BMP;

B = The TSS percent removal rate applicable to the second BMP.

- (7) Stormwater management measures shall also be designed to reduce, to the maximum extent feasible, the post-construction nutrient load of the anticipated load from the developed site in stormwater runoff generated from the water quality design storm. In achieving reduction of nutrients to the maximum extent feasible, the design of the site shall include green infrastructure BMPs that optimize nutrient removal while still achieving the performance standards in § 311-4P, Q and R.
- (8) In accordance with the definition of "FW1" at N.J.A.C. 7:9B-1.4, stormwater management measures shall be designed to prevent any increase in stormwater runoff to waters classified as FW1.
- (9) The Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-4.1(c)1 establish 300-foot riparian zones along Category One waters, as designated in the Surface Water Quality Standards at N.J.A.C. 7:9B, and certain upstream tributaries to Category One waters. A person shall not undertake a major development that is located within or discharges into a 300-foot riparian zone without prior authorization from the Department under N.J.A.C. 7:13.
- (10) Pursuant to the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-11.2(j)3.i, runoff from the water quality design storm that is discharged within a 300-foot riparian zone shall be treated in accordance with this subsection to reduce the post-construction load of total suspended solids by 95% of the anticipated load from the developed site, expressed as an annual average.
- (11) The stormwater runoff quality standards do not apply to the construction of one individual single-family dwelling, provided that it is not part of a larger development or subdivision that has received preliminary or final site plan approval prior to December 3, 2018, and that the motor vehicle surfaces are made of permeable material(s) such as gravel, dirt, and/or shells.

R. Stormwater runoff quantity standards.

- (1) This subsection contains the minimum design and performance standards to control stormwater runoff quantity impacts of major development.
- (2) In order to control stormwater runoff quantity impacts, the design engineer shall, using the assumptions and factors for stormwater runoff calculations at § 311-6, complete one of the following:
 - (a) Demonstrate through hydrologic and hydraulic analysis that for stormwater leaving the site, post-construction runoff hydrographs for the current and projected two-, ten-, and 100-year storm events, as defined and determined in § 311-6C and D, respectively, of this chapter, do not exceed, at any point in time, the preconstruction runoff hydrographs for the same storm events;
 - (b) Demonstrate through hydrologic and hydraulic analysis that there is no increase, as compared to the preconstruction condition, in the peak runoff rates of stormwater leaving the site for the current and projected two-, ten-, and 100-year storm events, as defined and determined pursuant to § 311-6C and D, respectively, of this chapter, and that the increased volume or change in timing of stormwater runoff will not increase flood damage at or downstream of the site. This analysis shall include the analysis of impacts of existing land uses and projected land uses assuming full development under existing zoning and land use ordinances in the drainage area;

- (c) Design stormwater management measures so that the post-construction peak runoff rates for the current and projected two-, ten-, and 100-year storm events, as defined and determined in § 311-6C and D, respectively, of this chapter, are 50%, 75% and 80%, respectively, of the preconstruction peak runoff rates. The percentages apply only to the post-construction stormwater runoff that is attributable to the portion of the site on which the proposed development or project is to be constructed; or
 - (d) In tidal flood hazard areas, stormwater runoff quantity analysis in accordance with § 311-4R(2)(a), (b) and (c) above is required unless the design engineer demonstrates through hydrologic and hydraulic analysis that the increased volume, change in timing, or increased rate of the stormwater runoff, or any combination of the three, will not result in additional flood damage below the point of discharge of the major development. No analysis is required if the stormwater is discharged directly into any ocean, bay, inlet, or the reach of any watercourse between its confluence with an ocean, bay, or inlet and downstream of the first water control structure.
- (3) The stormwater runoff quantity standards shall be applied at the site's boundary to each abutting lot, roadway, watercourse, or receiving storm sewer system.

§ 311-5. Stormwater management requirements for minor development.

The stormwater runoff requirements applicable to minor developments are as follows:

- A. For each square foot of new impervious surface, two gallons of stormwater shall be managed using green infrastructure practices. A volume of 0.78 gallon (equivalent to the water quality design storm of 1.25 inches) shall be retained on-site while the remainder may be discharged off-site from the stormwater management measure. Green infrastructure practices, including but not limited to grass swale, green roof, pervious paving systems, small-scale bioretention basins, rain gardens, small-scale infiltration basins, small-scale sand filter, vegetative strip, cistern, and drywell, shall be designed and implemented as required. The use of cisterns and drywells shall be permitted only in the event other listed methods cannot meet the requirements of this subsection as determined by the Borough or Board Engineer, as applicable.
- B. All minor development shall be subject to review by the Borough or Board Engineer, as applicable, to determine that all stormwater runoff created by the minor development is adequately controlled and does not cause an adverse impact on adjacent or nearby properties.
- C. In such cases where it is determined that the outflow from the stormwater management system will adversely affect adjacent or nearby properties, the outflow shall be directed to a stormwater inlet, gutter, swale, or other suitable stormwater runoff conveyance measure.
- D. If municipal review determines that the outflow from the stormwater management system will cause an adverse impact on adjacent or nearby properties and the outflow cannot be safely directed to a storm sewer, gutter, swale, or other suitable stormwater runoff conveyance measure, the stormwater runoff from the development shall be retained on-site at a rate of 2.75 gallons of storage (equivalent to the five-year storm of 4.41 inches) for each square foot of new impervious surface using green infrastructure practices or such other measures as may be required by the reviewing entity.
- E. If the applicant cannot comply with § 311-5A(4) above, the stormwater management systems shall be redesigned, or the project reduced in scope, so that the post-development runoff rates do not exceed predevelopment runoff rates to adjacent properties of record.

- F. Whenever a minor development includes one or more GI BMPs that will infiltrate into the existing subsoil as part of the site's stormwater management system, a subsurface geotechnical analysis shall be performed to determine the in-situ permeability of the soils within the infiltration footprint and to determine the depth of the seasonal high water table utilizing industry best practices.

§ 311-6. Calculation of stormwater runoff and groundwater recharge.

- A. Stormwater runoff shall be calculated in accordance with the following:

- (1) The design engineer shall calculate runoff using the following method: the USDA Natural Resources Conservation Service (NRCS) methodology, including the NRCS Runoff Equation and Dimensionless Unit Hydrograph, as described in Chapters 7, 9, 10, 15 and 16, Part 630, Hydrology National Engineering Handbook, incorporated herein by reference as amended and supplemented. This methodology is additionally described in Technical Release 55 - Urban Hydrology for Small Watersheds (TR-55), dated June 1986, incorporated herein by reference as amended and supplemented. Information regarding the methodology is available from the Natural Resources Conservation Service website at <https://directives.sc.egov.usda.gov/>; or at United States Department of Agriculture Natural Resources Conservation Service, New Jersey State Office.
- (2) For the purpose of calculating curve numbers and groundwater recharge, there is a presumption that the preconstruction condition of a site or portion thereof is a wooded land use with good hydrologic condition. The term "curve number" applies to the NRCS methodology above at § 311-6A(1). A curve number or a groundwater recharge land cover for an existing condition may be used on all or a portion of the site if the design engineer verifies that the hydrologic condition has existed on the site or portion of the site for at least five years without interruption prior to the time of application. If more than one land cover has existed on the site during the five years immediately prior to the time of application, the land cover with the lowest runoff potential shall be used for the computations. In addition, there is the presumption that the site is in good hydrologic condition (if the land use type is pasture, lawn, or park), with good cover (if the land use type is woods), or with good hydrologic condition and conservation treatment (if the land use type is cultivation).
- (3) The five-year cover requirement shall not apply when the construction of the existing cover condition was not included within any applicable local, county, or state agency approvals. In such circumstances, the design engineer shall reference historic aerials or public records as available to determine the most recent permitted cover type for the area in question. When such information does not exist or is not easily discernable, the design engineer shall assume the existing cover type to be woods with good cover.
- (4) In computing preconstruction stormwater runoff, the design engineer shall account for all significant land features and structures, such as ponds, wetlands, depressions, hedgerows, or culverts, that may reduce preconstruction stormwater runoff rates and volumes.
- (5) In computing stormwater runoff from all design storms, the design engineer shall consider the relative stormwater runoff rates and/or volumes of pervious and impervious surfaces separately to accurately compute the rates and volume of stormwater runoff from the site. To calculate runoff from unconnected impervious cover, urban impervious area modifications as described in the NRCS Technical Release 55 - Urban Hydrology for Small Watersheds or other methods may be employed.

- (6) If the invert of the outlet structure of a stormwater management measure is below the flood hazard design flood elevation as defined at N.J.A.C. 7:13, the design engineer shall take into account the effects of tailwater in the design of structural stormwater management measures. The tailwater elevation shall be based on the flood elevation as identified in any available FIRM maps, plus three feet, as required under Method 3 of N.J.A.C. 7:13-3.4(e). If the FIRM does not identify a flood hazard base elevation, the design engineer shall use best judgment to determine an appropriate tailwater depth to perform the routing calculations.
- B. Groundwater recharge may be calculated in accordance with the following: the New Jersey Geological Survey Report GSR-32: A Method for Evaluating Groundwater-Recharge Areas in New Jersey, incorporated herein by reference as amended and supplemented. Information regarding the methodology is available from the New Jersey Stormwater Best Management Practices Manual; at the New Jersey Geological Survey website at <https://www.nj.gov/dep/njgs/pricelst/greport/gsr32.pdf>; or at New Jersey Geological and Water Survey, 29 Arctic Parkway, PO Box 420, Mail Code 29-01, Trenton, New Jersey 08625-0420.
- C. The precipitation depths of the current two-, ten-, and 100-year storm events shall be determined by multiplying the values determined in accordance with items 1 and 2 below:
- (1) The applicant shall utilize the National Oceanographic and Atmospheric Administration (NOAA), National Weather Service's Atlas 14 Point Precipitation Frequency Estimates: NJ, in accordance with the location(s) of the drainage area(s) of the site. This data is available at https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html?bkmrk=nj; and
 - (2) The applicant shall utilize Table 5: Current Precipitation Adjustment Factors below, which sets forth the applicable multiplier for the drainage area(s) of the site, in accordance with the county or counties where the drainage area(s) of the site is located. Where the major development lies in more than one county, the precipitation values shall be adjusted according to the percentage of the drainage area in each county. Alternately, separate rainfall totals can be developed for each county using the values in the table below.

Table 5: Current Precipitation Adjustment Factors			
County	Current Precipitation Adjustment Factors		
	Two-Year Design Storm	Ten-Year Design Storm	100-Year Design Storm
Monmouth	1.00	1.01	1.02

- D. Table 6: Future Precipitation Change Factors provided below sets forth the change factors to be used in determining the projected two-, ten-, and 100-year storm events for use in this chapter, which are organized alphabetically by county. The precipitation depth of the projected two-, ten-, and 100-year storm events of a site shall be determined by multiplying the precipitation depth of the two-, ten-, and 100-year storm events determined from the National Weather Service's Atlas 14 Point Precipitation Frequency Estimates pursuant to § 311-6C(1) above, by the change factor in the table below, in accordance with the county or counties where the drainage area(s) of the site is located. Where the major development and/or its drainage area lies in more than one county, the precipitation values shall be adjusted according to the percentage of the drainage area in each county. Alternately, separate rainfall totals can be developed for each county using the values in the table below.

Table 6: Future Precipitation Change Factors			
County	Future Precipitation Change Factors		
	Two-Year Design Storm	Ten-Year Design Storm	100-Year Design Storm
Monmouth	1.19	1.19	1.26

§ 311-7. Sources for technical guidance.

- A. Technical guidance for stormwater management measures can be found in the documents listed below, which are available to download from the Department's website at <https://dep.nj.gov/stormwater/bmp-manual/>.
- (1) Guidelines for stormwater management measures are contained in the New Jersey Stormwater Best Management Practices Manual, as amended and supplemented. Information is provided on stormwater management measures such as, but not limited to, those listed in Tables 1, 2, and 3.
 - (2) Additional maintenance guidance is available on the Department's website at <https://dep.nj.gov/stormwater/maintenance-guidance/>.
- B. Submissions required for review by the Department should be mailed to the Division of Watershed Protection and Restoration, New Jersey Department of Environmental Protection, Mail Code 501-02A, PO Box 420, Trenton, New Jersey 08625-0420.

§ 311-8. Solids and floatable materials control standards.

Site design features identified under § 311-4F above, or alternative designs in accordance with § 311-4G above, to prevent discharge of trash and debris from drainage systems shall comply with the following standard to control passage of solid and floatable materials through storm drain inlets. For purposes of this paragraph, "solid and floatable materials" means sediment, debris, trash, and other floating, suspended, or settleable solids. For exemptions to this standard, see § 311-8B below.

- A. Design engineers shall use one of the following grates whenever they use a grate in pavement or another ground surface to collect stormwater from that surface into a storm drain or surface water body under that grate:
- (1) The New Jersey Department of Transportation (NJDOT) bicycle-safe grate, which is described in Chapter 2.4 of the NJDOT Bicycle Compatible Roadways and Bikeways Planning and Design Guidelines; or
 - (2) A different grate, if each individual clear space in that grate has an area of no more than seven square inches, or is no greater than 0.5 inch across the smallest dimension.
 - (a) Examples of grates subject to this standard include grates in grate inlets, the grate portion (non-curb-opening portion) of combination inlets, grates on storm sewer manholes, ditch grates, trench grates, and grates of spacer bars in slotted drains. Examples of ground surfaces include surfaces of roads (including bridges), driveways, parking areas, bikeways, plazas, sidewalks, lawns, fields, open channels, and stormwater system floors used to collect stormwater from the surface into a storm drain or surface water body.
 - (3) For curb-opening inlets, including curb-opening inlets in combination inlets, the clear space in

that curb opening, or each individual clear space if the curb opening has two or more clear spaces, shall have an area of no more than seven square inches, or be no greater than two inches across the smallest dimension.

B. The standard in § 311-8A above does not apply:

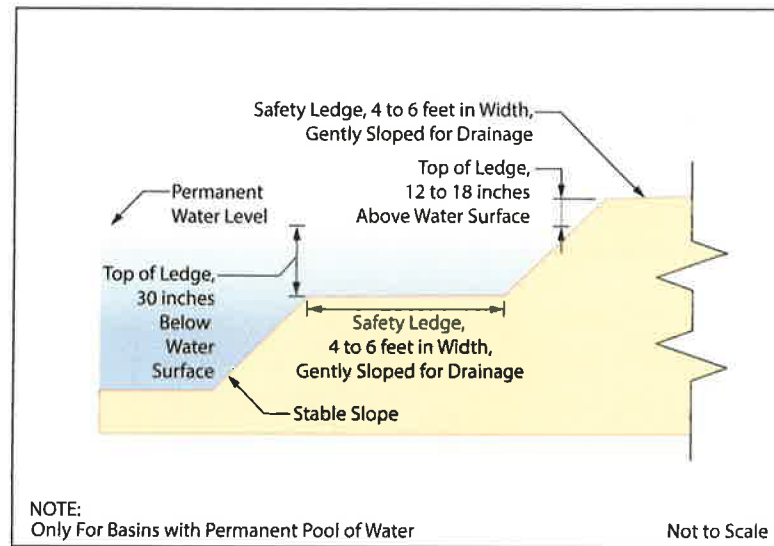
- (1) Where each individual clear space in the curb opening in existing curb-opening inlet does not have an area of more than nine square inches;
- (2) Where the municipality agrees that the standards would cause inadequate hydraulic performance that could not practicably be overcome by using additional or larger storm drain inlets;
- (3) Where flows from the water quality design storm as specified in N.J.A.C. 7:8 are conveyed through any device (e.g., end-of-pipe netting facility, manufactured treatment device, or a catch basin hood) that is designed, at a minimum, to prevent delivery of all solid and floatable materials that could not pass through one of the following:
 - (a) A rectangular space $4 \frac{5}{8}$ inches long and $1 \frac{1}{2}$ inches wide (this option does not apply for outfall netting facilities); or
 - (b) A bar screen having a bar spacing of 0.5 inch.
- (4) Note that these exemptions do not authorize any infringement of requirements in the Residential Site Improvement Standards for bicycle-safe grates in new residential development [N.J.A.C. 5:21-4.18(b)2 and 7.4(b)1].
- (5) Where flows are conveyed through a trash rack that has parallel bars with one-inch spacing between the bars, to the elevation of the water quality design storm as specified in N.J.A.C. 7:8; or
- (6) Where the New Jersey Department of Environmental Protection determines, pursuant to the New Jersey Register of Historic Places Rules at N.J.A.C. 7:4-7.2(c), that action to meet this standard is an undertaking that constitutes an encroachment or will damage or destroy the New Jersey Register listed historic property.

§ 311-9. Safety standards for stormwater management basins.

- A. This section sets forth requirements to protect public safety through the proper design and operation of stormwater management BMPs. This section applies to any new stormwater management BMP.
- B. The provisions of this section are not intended to preempt more stringent municipal or county safety requirements for new or existing stormwater management BMPs. Municipal and county stormwater management plans and ordinances may, pursuant to their authority, require existing stormwater management BMPs to be retrofitted to meet one or more of the safety standards in § 311-9C(1), (2) and (3) for trash racks, overflow grates, and escape provisions at outlet structures.
- C. Requirements for trash racks, overflow grates and escape provisions.
 - (1) A trash rack is a device designed to catch trash and debris and prevent the clogging of outlet structures. Trash racks shall be installed at the intake to the outlet from the stormwater management BMP to ensure proper functioning of the BMP outlets in accordance with the following:
 - (a) The trash rack shall have parallel bars, with no greater than six-inch spacing between the

bars;

- (b) The trash rack shall be designed so as not to adversely affect the hydraulic performance of the outlet pipe or structure;
 - (c) The average velocity of flow through a clean trash rack is not to exceed 2.5 feet per second under the full range of stage and discharge. Velocity is to be computed on the basis of the net area of opening through the rack; and
 - (d) The trash rack shall be constructed of rigid, durable, and corrosion-resistant material and designed to withstand a perpendicular live loading of 300 pounds per square foot.
- (2) An overflow grate is designed to prevent obstruction of the overflow structure. If an outlet structure has an overflow grate, such grate shall meet the following requirements:
- (a) The overflow grate shall be secured to the outlet structure but removable for emergencies and maintenance.
 - (b) The overflow grate spacing shall be no greater than two inches across the smallest dimension.
 - (c) The overflow grate shall be constructed and installed to be rigid, durable, and corrosion resistant, and shall be designed to withstand a perpendicular live loading of 300 pounds per square foot.
- (3) Stormwater management BMPs shall include escape provisions as follows:
- (a) If a stormwater management BMP has an outlet structure, escape provisions shall be incorporated in or on the structure. Escape provisions include the installation of permanent ladders, steps, rungs, or other features that provide easily accessible means of egress from stormwater management BMPs. With the prior approval of the municipality pursuant to § 311-9C, a freestanding outlet structure may be exempted from this requirement;
 - (b) Safety ledges shall be constructed on the slopes of all new stormwater management BMPs having a permanent pool of water deeper than 2 1/2 feet. Safety ledges shall be comprised of two steps. Each step shall be four feet to six feet in width. One step shall be located approximately 2 1/2 feet below the permanent water surface, and the second step shall be located one foot to 1 1/2 feet above the permanent water surface. See § 311-9E for an illustration of safety ledges in a stormwater management BMP; and
 - (c) In new stormwater management BMPs, the maximum interior slope for an earthen dam, embankment, or berm shall not be steeper than three horizontal to one vertical.
- D. Variance or exemption from safety standard. A variance or exemption from the safety standards for stormwater management BMPs may be granted only upon a written finding by the municipality that the variance or exemption will not constitute a threat to public safety.
- E. Safety ledge illustration.

Elevation View - Basin Safety Ledge Configuration**§ 311-10. Requirements for site development stormwater plan.****A. Submission of site development stormwater plan.**

- (1) Whenever an applicant seeks municipal approval of a development subject to this chapter, the applicant shall submit all of the required components of the checklist for the site development stormwater plan at § 311-10C below as part of the submission of the application for approval.
- (2) The applicant shall demonstrate that the project meets the standards set forth in this chapter.
- (3) The applicant shall submit eight copies of the materials listed in the checklist for site development stormwater plans in accordance with § 311-10C of this chapter.

B. Site development stormwater plan approval. The applicant's site development project shall be reviewed as a part of the review process by the municipal board or official from which municipal approval is sought. That municipal board or official shall consult the municipality's review engineer to determine if all of the checklist requirements have been satisfied and to determine if the project meets the standards set forth in this chapter.**C. Submission of site development stormwater plan.** The following information shall be required:

- (1) Topographic base map. The reviewing engineer may require upstream tributary drainage system information as necessary. It is recommended that the topographic base map of the site be submitted which extends a minimum of 200 feet beyond the limits of the proposed development, at a scale of one inch equals 200 feet or greater, showing two-foot contour intervals. The map as appropriate may indicate the following: existing surface water drainage, shorelines, steep slopes, soils, erodible soils, perennial or intermittent streams that drain into or upstream of the Category One waters, wetlands and floodplains along with their appropriate buffer strips, marshlands and other wetlands, pervious or vegetative surfaces, existing man-made structures, roads, bearing and distances of property lines, and significant natural and man-made features

not otherwise shown.

- (2) Environmental site analysis. A written and graphic description of the natural and man-made features of the site and its surroundings should be submitted. This description should include a discussion of soil conditions, slopes, wetlands, waterways and vegetation on the site. Particular attention should be given to unique, unusual, or environmentally sensitive features and to those that provide particular opportunities or constraints for development.
- (3) Geotechnical analysis. Geotechnical analysis of the site as it relates to the stormwater system design shall be provided. The analysis shall include test pit and boring logs as appropriate and shall identify the anticipated depth to the seasonal high groundwater table, all identifiable soil strata, and the in-situ tested permeability of the most restrictive soil strata as outlined in Chapter 12 of the NJDEP Stormwater BMP Manual, which details the soil testing criteria including the permitted means and methods.
- (4) Project description and site plans. A map (or maps) at the scale of the topographical base map indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural facilities for stormwater management and sediment control, and other permanent structures. The map(s) shall also clearly show areas where alterations will occur in the natural terrain and cover, including lawns and other landscaping, and seasonal high groundwater elevations. A written description of the site plan and justification for proposed changes in natural conditions shall also be provided.
- (5) Land use planning and source control plan. This plan shall provide a demonstration of how the goals and standards of §§ 311-3 through 311-6 are being met. The focus of this plan shall be to describe how the site is being developed to meet the objective of controlling groundwater recharge, stormwater quality and stormwater quantity problems at the source by land management and source controls whenever possible.
- (6) Stormwater management facilities map. The following information, illustrated on a map of the same scale as the topographic base map, shall be included:
 - (a) Total area to be disturbed, paved or built upon, proposed surface contours, land area to be occupied by the stormwater management facilities and the type of vegetation thereon, and details of the proposed plan to control and dispose of stormwater.
 - (b) Details of all stormwater management facility designs, during and after construction, including discharge provisions, discharge capacity for each outlet at different levels of detention and emergency spillway provisions with maximum discharge capacity of each spillway.
- (7) Calculations.
 - (a) Comprehensive hydrologic and hydraulic design calculations for the predevelopment and post-development conditions for the design storms specified in § 311-4 of this chapter.
 - (b) When the proposed stormwater management control measures depend on the hydrologic properties of soils or require certain separation from the seasonal high water table, then a soils report shall be submitted. The soils report shall be based on on-site boring logs or soil pit profiles. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soils present at the location of the control measure.

- (8) Maintenance and repair plan. The design and planning of the stormwater management facility shall meet the maintenance requirements of § 311-11.
- (9) Waiver from submission requirements. The municipal official or board reviewing an application under this chapter may, in consultation with the municipality's review engineer, waive submission of any of the requirements in § 311-10C(1) through (7) of this chapter when it can be demonstrated that the information requested is impossible to obtain or it would create a hardship on the applicant to obtain and its absence will not materially affect the review process.

§ 311-11. Maintenance and repair.

- A. Applicability. Projects subject to review as in § 311-1C of this chapter shall comply with the requirements of § 311-11B and C.
- B. General maintenance.
 - (1) The design engineer shall prepare a maintenance plan for the stormwater management measures incorporated into the design of a major development.
 - (2) The maintenance plan shall contain specific preventative maintenance tasks and schedules; cost estimates, including estimated cost of sediment, debris, or trash removal; and the name, address, and telephone number of the person or persons responsible for preventative and corrective maintenance (including replacement). The plan shall contain information on BMP location, design, ownership, maintenance tasks and frequencies, and other details as specified in Chapter 8 of the NJ BMP Manual, as well as the tasks specific to the type of BMP, as described in the applicable chapter containing design specifics.
 - (3) If the maintenance plan identifies a person other than the property owner (for example, a developer, a public agency or homeowners' association) as having the responsibility for maintenance, the plan shall include documentation of such person's or entity's agreement to assume this responsibility, or of the owner's obligation to dedicate a stormwater management facility to such person under an applicable ordinance or regulation.
 - (4) Responsibility for maintenance shall not be assigned or transferred to the owner or tenant of an individual property in a residential development or project, unless such owner or tenant owns or leases the entire residential development or project. The individual property owner may be assigned incidental tasks, such as weeding of a green infrastructure BMP, provided the individual agrees to assume these tasks; however, the individual cannot be legally responsible for all of the maintenance required.
 - (5) If the party responsible for maintenance identified under § 311-11B(3) above is not a public agency, the maintenance plan and any future revisions based on § 311-11B(7) below shall be recorded upon the deed of record for each property on which the maintenance described in the maintenance plan must be undertaken.
 - (6) Preventative and corrective maintenance shall be performed to maintain the functional parameters (storage volume, infiltration rates, inflow/outflow capacity, etc.) of the stormwater management measure, including, but not limited to, repairs or replacement to the structure; removal of sediment, debris, or trash; restoration of eroded areas; snow and ice removal; fence repair or replacement; restoration of vegetation; and repair or replacement of nonvegetated linings.

- (7) The party responsible for maintenance identified under § 311-11B(3) above shall perform all of the following requirements:
 - (a) Maintain a detailed log of all preventative and corrective maintenance for the structural stormwater management measures incorporated into the design of the development, including a record of all inspections and copies of all maintenance-related work orders;
 - (b) Evaluate the effectiveness of the maintenance plan at least once per year and adjust the plan and the deed as needed; and
 - (c) Retain and make available, upon request by any public entity with administrative, health, environmental, or safety authority over the site, the maintenance plan and the documentation required by § 311-11B(6) and (7) above.
 - (8) The requirements of § 311-11B(3) and (4) do not apply to stormwater management facilities that are dedicated to and accepted by the municipality or another governmental agency, subject to all applicable municipal stormwater general permit conditions, as issued by the Department.
 - (9) In the event that the stormwater management facility becomes a danger to public safety or public health, or if it is in need of maintenance or repair, the municipality shall so notify the responsible person in writing. Upon receipt of that notice, the responsible person shall have 14 days to effect maintenance and repair of the facility in a manner that is approved by the Municipal Engineer or his designee. The municipality, in its discretion, may extend the time allowed for effecting maintenance and repair for good cause. If the responsible person fails or refuses to perform such maintenance and repair, the municipality or county may immediately proceed to do so and shall bill the cost thereof to the responsible person. Nonpayment of such bill may result in a lien on the property.
- C. Nothing in this section shall preclude the municipality in which the major development is located from requiring the posting of a performance or maintenance guarantee in accordance with N.J.S.A. 40:55D-53.

§ 311-12. Violations and penalties.

Any person(s) who erects, constructs, alters, repairs, converts, maintains, or uses any building, structure or land in violation of this chapter shall be subject to penalties as specified in Article II of Chapter 1, General Provisions, of the Code of the Borough of Atlantic Highlands, entitled "General Penalty."

§ 311-13. Severability.

Each section, subsection, sentence, clause and phrase of this chapter is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this chapter to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this chapter.

§ 311-14. When effective.

This chapter shall be in full force and effect from and after its adoption and any publication as required by law.

STREETS AND SIDEWALKS

Chapter 317

STREETS AND SIDEWALKS

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Development regulations — See Ch. 150.

Abandoned vehicles — See Ch. 346.

Property maintenance — See Ch. 265.

ARTICLE I

Snow and Ice Removal**[Adopted 2-10-1965 by Ord. No. 488]****§ 317-1. Owner required to clear snow and ice. [Amended 2-23-2011 by Ord. No. 03-2011; 4-10-2019 by Ord. No. 03-2019]**

That the owner or owners of every lot, tract or parcel of land fronting on any street, highway or public place within the limits of the Borough of Atlantic Highlands shall, within 24 hours after the termination of a precipitation causing the sidewalk or that part of the public way reserved for pedestrian traffic in front of said lot, tract or parcel of land fronting on any street, highway or public place in said Borough to be covered with snow or ice, remove, or cause to be removed, such snow or ice. Ice which is so frozen as to make removal impractical shall either be treated with rock salt or other chemicals which will thaw it sufficiently to permit removal or be thoroughly covered with sand. In addition, it shall be unlawful for anyone to shovel, place, push, blow and/or dispose of snow in any street.

§ 317-2. Violation.

It shall be a violation of this article for any owner or owners of every lot, tract or parcel of land fronting on any street, highway or public place in said Borough to fail to remove such snow or ice within 24 hours after the termination of the precipitation resulting in the same.

§ 317-3. Violations and penalties. [Amended 2-23-2011 by Ord. No. 03-2011]

Any person or persons, firm or corporation violating any of the provisions of this article, upon conviction thereof, shall be subject to a penalty as provided in Chapter 1, Article II, General Penalty.

ATLANTIC HIGHLANDS CODE

Chapter 323

TAXATION

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Development regulations — See Ch. 150.

ARTICLE I

Payment of Taxes, Charges and Assessments
[Adopted 10-9-1984 by Ord. No. 842]**§ 323-1. Certificate of payment required. [Amended 5-8-1991 by Ord. No. 994-91]**

Any owner and/or applicant for a certificate of occupancy, a certificate of continued occupancy, permit, license, variance, subdivision of land, construction permit, subcode permit, easement or any other relief that can be granted by the governing body or any official, officer, board, agency or subagency, regarding any real estate or activity upon or in any real estate located in the Borough of Atlantic Highlands, as a condition for the issuance or renewal of any of the aforementioned permits, licenses, etc., shall secure in writing from the appropriate Borough officer, a statement that all real estate taxes, water charges, sewer charges and assessments have been paid to a current basis for the property on which the activity or business in question is to take place. In the event that property taxes or assessments are unpaid to a current basis, no permits or licenses shall be issued until all such payments have been made by or on behalf of the property owner.

§ 323-2. Relief to be issued.

No relief referred to in § 323-1 of this article shall be issued by the governing body, board, agency, subagency, officer or employee unless all real estate taxes, water charges and/or sewer bills have been paid through the calendar year quarter of the time of the application.

§ 323-3. Revocation or suspension of licenses or permits. [Amended 5-8-1991 by Ord. No. 994-91]

Whenever a property owner has failed to pay the taxes due on the property for at least three consecutive quarters, the Borough may, upon notice to the licensee and property owner, revoke or suspend any license or permit until the payment of the delinquent taxes and assessments is made. Upon payment of the delinquent taxes or assessments, the license or permit shall be restored.

§ 323-4. Nonapplicability. [Amended 5-8-1991 by Ord. No. 994-91]

The provisions of this article shall not apply to nor include any alcoholic beverage license or permit issued pursuant to the Alcoholic Beverage Control Act.

§ 323-5. Applicability. [Amended 5-8-1991 by Ord. No. 994-91]

The provisions of this article shall apply to all other permits and licenses issued by, or requiring approval of, the Borough of Atlantic Highlands, or any of its Boards or Agencies or Offices, including but not limited to:

- A. Permits required pursuant to the Uniform Construction Code.
- B. Certificates of occupancy, provided, however, that if a certificate of occupancy is needed for closing of title, a conditional, temporary certificate of occupancy may be issued upon delivery of executed contracts to the Borough Clerk for the sale of said property. The conditional, temporary certificate of occupancy shall be contingent upon the payment of all taxes at the time of closing of title; and if not paid at closing, the conditional, temporary certificate of occupancy shall be deemed revoked.
- C. Food establishment licenses.
- D. Soil removal permits.

- E. Tree removal permits.
- F. Amusement licenses.

ARTICLE II

Tax Exemption for Improvements and New Construction**[Adopted 12-13-1995 by Ord. No. 9-95]****§ 323-6. Legislative findings.**

The Legislature has determined that various statutes authorized by N.J.S.A. Const. Art. 8 § 1, par. 6, permitting municipalities to grant, for periods of up to five years, exemptions from taxation in areas in need of rehabilitation, have proven to be effective in prompting construction and rehabilitation of residential and commercial structures threatened with economic decline. The Legislature adopted Chapter 441 of the Laws of 1991 (N.J.S.A. 40A:21-1 et seq.) so as to consolidate and make more coherent the most useful features of such statutes. Chapter 441 provides that if the governing body determines that there are trends in the municipality toward deterioration which it believes will, unless countered by such incentive, inexorably tend toward further deterioration, the governing body may adopt an ordinance granting tax exemptions throughout the municipality to the same extent as if the municipality's neighborhoods had been determined to be in need of rehabilitation. It is the opinion of the Council that in the present economic times there exists an unwillingness of owners of property to properly maintain and improve their properties arising from the perception that the making of such improvements will cause taxes to rise. These feelings create a circle whereby repairs and improvements are delayed, deterioration begins to set in, and the neighborhood itself begins to deteriorate. The Borough Council believes that by exempting for a limited period a portion of such improvements from taxation, much of the unwillingness and fear noted would be dissipated and owners and investors would be encouraged to rehabilitate and improve properties. By doing so, they would improve the Borough and preserve the Town for the future. The Council, being cognizant of these facts, does hereby grant the tax exemptions set forth in this article.

§ 323-7. Tax exemption for improvements.

- A. Definitions. As used in this article, terms shall be defined as in N.J.S.A. 40A:21-3.
- B. Tax exemption amount declared.
 - (1) Dwellings. In determining the value of real property, the Borough shall regard the first \$25,000 in the Assessor's full and true value of improvements for each dwelling unit, primarily and directly affected by the improvement, in any dwelling more than 20 years old, as not increasing the value of the property for a period of five years notwithstanding that the value of the property to which the improvements are made is increased thereby. During the exemption period, the assessment on the property shall not be less than the assessment thereon existing immediately prior to the improvement(s) unless there is damage to the dwelling sufficient to warrant a reduction. **[Amended 6-25-2008 by Ord. No. 07-2008]**
 - (2) Multiple dwellings, commercial or industrial structures. In determining the value of multiple dwellings, or commercial or industrial structures, the Borough shall regard the first \$25,000 in the Assessor's full and true value of improvements for each of such properties for improvements to any structure more than 20 years old as not increasing the value of the property for a period of five years, notwithstanding that the value of the property to which the improvements are made is increased thereby. During the exemption period, the assessment on the property shall not be less than the assessment thereon existing immediately prior to the improvements unless there is damage to the structure sufficient to warrant a reduction.
- C. Action of the assessor. The Assessor shall determine, on October 1 of the year following the date of completion of an improvement, the true taxable value thereof. The amount of tax to be paid for the

first full tax year following completion shall be based on the assessed valuation of the property for the previous year, plus any portion of the assessed valuation of the improvement, conversion or construction not allowed an exemption pursuant to this act. The property shall be treated in the appropriate manner for five tax years.

- D. Additional improvements. An additional improvement completed on a property granted a previous exemption during the period in which the previous exemption is in effect shall be qualified for an exemption as if such property had not received a previous exemption. The additional improvement shall be considered as separate for the purposes of calculating the exemption, except that the assessed value of any previous improvement shall be added to the assessed valuation as it was prior to that improvement for the purpose of determining the assessed valuation of the property from which any additional abatement is to be subtracted.
- E. Delinquent taxes. No exemption or abatement shall be granted with respect to any property for which property taxes or water and sewer bills are delinquent or remain unpaid or for which penalties for nonpayment of taxes are due.
- F. Application to be filed. No exemption shall be granted except upon written application on a form prescribed by the Division of Taxation in the Department of Treasury and shall be filed with the Assessor within 30 calendar days following the completion of the improvement. The granting of an exemption must be approved by the Assessor and shall be made a permanent part of the official tax records and shall contain a notice of the termination date thereof.
- G. Taxes to which exemption applies. The exemption of real property taxes shall apply to property taxes levied for municipal, school and county government purposes and for the purposes of funding any other property tax exemptions.

§ 323-8. Tax agreements for new construction.

- A. Tax agreements for new construction of commercial structures or multiple dwellings.
 - (1) The Borough Council is granted the discretionary authority to enter into agreements, on a project basis, for the abatement of taxes for the new construction of commercial structures or multiple dwellings.
 - (2) Applicants shall provide the governing body with an application setting forth:
 - (a) A general description of a project for which abatement is sought;
 - (b) A legal description of all real estate necessary for the project;
 - (c) Plans, drawings and other documents as may be required by the governing body to demonstrate the structure and design of the project;
 - (d) A description of the number, classes and type of employees to be employed at the project site within two years of completion of the project;
 - (e) A statement of the reasons for seeking tax abatement on the project, and a description of the benefits to be realized by the applicant and the Borough if a tax agreement is granted;
 - (f) Estimates of the cost of completing such project;
 - (g) A statement showing the real project site; estimated tax payments that would be made annually by the applicant on the project during the period of the agreement; and estimated

tax payments that would be made by the applicant on the project during the first full year following the termination of the tax agreement;

- (h) A description of any lease agreements between the applicant and purposed users of the commercial or industrial project, and a history and description of the user's businesses;
- (i) Such other pertinent information as the governing body may require.

B. Tax agreement.

- (1) On approval of the Borough Council, the Borough may enter into a written agreement with the applicant for the exemption and abatement of local real property taxes on the newly constructed improvements. The agreement shall provide for the applicant to pay to the municipality in lieu of full property tax payments an amount annually to be computed by one of the methods of computation defined and permitted by N.J.S.A. 40A:21-10, to be determined in the discretion of the Borough Council.
- (2) All tax agreements shall be in effect for no more than five full tax years following the date of completion of the project.

C. Termination of tax agreement.

- (1) If during any tax year prior to the termination of the tax agreement, the property owner ceases to operate or disposes of the property, or fails to meet the conditions for qualifying, then the tax which would have otherwise been payable for each tax year shall become due and payable from the property owner as if no exemption and abatement had been granted. The Borough Council shall notify the property owner and Tax Collector forthwith and the Tax Collector shall within 15 days thereof notify the owner of the property of the amount of taxes due.
- (2) However, with respect to the disposal of the property, the new owner of the property may request the Borough Council to continue the exemption and abatement agreement and must demonstrate the continuance of the conditions which qualified the property. If the Council determines said conditions continue, no tax shall be due and the exemption and the abatement shall continue, and the agreement shall remain in effect.

D. Report of Tax Assessor.

- (1) The Tax Assessor shall report, on or before September 1 of each year, to the Mayor and Council as to the total amount of real property taxes exempted and the total amount abated within the Borough in the current tax year under this article.
- (2) This report shall state, for the current tax year, the total amount of payments made in lieu of taxes according to the formula utilized by the Borough and the difference between that total amount and the total amount of real property taxes which would have been paid on the project had the tax agreement not been in effect.

E. Effective date. This article and provision for tax abatement agreements was readopted by Ordinance 03-2011 on February 23, 2011. This article shall expire as of February 22, 2021, unless readopted and/or extended by proper ordinance; however, any tax abatement agreement approved or adopted prior to that expiration date shall remain in effect for the full approved period of the abatement agreement. **[Amended 9-27-2017 by Ord. No. 08-2017]**

Chapter 327**TAXICABS**

[HISTORY: Adopted by Mayor and Council of Borough of Atlantic Highlands 4-3-1925 by Ord. No. 184; amended in its entirety 6-22-1982 by Ord. No. 795. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Vehicles and traffic — See Ch. 139.

Licensing — See Ch. 211.

§ 327-1. Definitions.

The following words and phrases, and their derivatives when used in this chapter, shall have the meanings hereafter ascribed to them:

DRIVER — Any person who drives a taxicab within this Borough.

OPERATION OF A TAXICAB — Shall consist of transporting in such taxicab one or more persons for hire along any of the streets of this Borough. Accepting a passenger to be transported for hire within this Borough or from a point within this Borough to a point outside of the Borough limits or discharging a passenger transported for hire from a point outside the Borough limits to a point within the Borough limits shall be deemed to be "operation of a taxicab" within the Borough within the meaning thereof. The "operation of a taxicab" in any of the above-described methods by one other than the owner shall be deemed operation by the owner thereof as well as by the person actually driving the same. The transportation of any person other than the owner or driver in any motor vehicle bearing the sign thereon or therein using the word "taxi," "taxicab," "cab," "hack" or term word of similar connotation, shall be prima facie evidence of operation.

OWNER — Any person, corporation or association in whose name title to any taxicab is registered with the New Jersey Department of Motor Vehicles or who appears in such records to be the conditional vendee or lessee thereof.

TAXICAB — Includes any automobile or motor car, commonly called "taxi," engaged in the business of carrying passengers for hire which is held out, announced or advertised to operate or run or which is operated or run over any of the streets of the Borough of Atlantic Highlands and which accepts passengers in this Borough for transportation from points or places to points or places within or without said Borough.

§ 327-2. License required.

From and after the effective date of this chapter, no person shall operate any taxicab within this Borough unless both the taxicab and the driver thereof are licensed pursuant to this chapter and conform to all the provisions thereof.

§ 327-3. Classes of licenses.

There are hereby established two classes of taxicab licenses, to be known as "taxicab driver's license" and "taxicab owner's license," respectively.

§ 327-4. Taxicab driver's license.

A taxicab driver's license shall entitle the person named therein to operate within this Borough any taxicab duly licensed hereunder until said license either expires or is surrendered, suspended or revoked and shall not be transferable.

§ 327-5. Taxicab owner's license.

- A. A taxicab owner's license shall entitle the company, corporation or partnership which owns and operates said taxicabs in this Borough to operate all of its cabs in the Borough on a continuous twenty-four-hour basis, provided that all of the other sections of this chapter are complied with or until said license shall either expire or is surrendered, suspended or revoked, and such license shall not be transferable. Said license shall be displayed in the taxicab in a manner so as to be clearly visible to any passenger riding in said taxicab.
- B. Every holder of a taxicab license in the Borough shall have a telephone listing published in the county telephone directory and shall be available for hire by the residents of the Borough during the effective term of said license.

§ 327-6. Duration of license.

Every license issued pursuant to the terms of this chapter shall expire at 12:00 midnight of the 31st of January of the next year succeeding in which it was issued, unless sooner surrendered, suspended or revoked.

§ 327-7. Application for taxicab driver's license.

- A. Every applicant for a driver's license shall, in addition to the requirements herein provided and of any law of this state, prove to the satisfaction of the Mayor and Council that:
 - (1) He is over the age of 18 years.
 - (2) He is in good health, with good eyesight.
 - (3) He is not addicted to the use of intoxicating liquors or drugs.
 - (4) He is able to read and write the English language.
 - (5) He is of good character.
 - (6) He has not been convicted of an indictable offense or of reckless driving within two years next preceding the filing of such application.
 - (7) He has knowledge of the state motor vehicle laws and traffic regulations.
 - (8) He has knowledge of the ordinances and geography of the Borough of Atlantic Highlands.
- B. He shall furnish with the application for such driver's license a recent photograph of himself of a size not less than 1 1/4 inches in height and 1 3/4 inches in length, which photograph shall be filed with the application.
- C. Such applicant for a driver's license under this chapter shall be fingerprinted before the license is issued.

- D. All applications for driver's licenses shall be filed with the Municipal Clerk, in writing, in duplicate. The Municipal Clerk shall submit said applications to the Mayor and Council for action at the next succeeding meeting, and any and all applications may be granted or refused by the vote of the majority of the members of said body present at such meeting.

§ 327-8. Conditions for issuance of owner's license.

No taxi owner's license shall be issued for any vehicle herein required to be licensed until the owner thereof shall have filed an application for the same, addressed to the Mayor and Council, setting forth the character of the vehicle proposed to be licensed, the correct name of the owner thereof, the residence or address of the principal office of such owner, and filed with the Municipal Clerk a certification of insurance policy, with the premium prepaid thereon, of a company duly licensed to transact business under the insurance laws of the State of New Jersey, in the sum of \$500,000 against loss from liability imposed by law upon said owner for damages on account of bodily injury or death suffered by one person and in the sum of \$1,000,000 against loss from liability imposed by law upon the same owner for damages on account of bodily injury or death suffered by more than one person as a result of an accident occurring by reason of the ownership, maintenance or use of the vehicle so licensed within the Borough of Atlantic Highlands and the sum of \$100,000 against loss from liability imposed by law upon said owner for personal property damage suffered by any person or persons as a result of an accident occurring by reason of ownership, maintenance or use of the vehicle so licensed. Such license shall continue to be effective and operative only as long as said insurance policy shall remain in force and effect, and the full amounts payable thereunder shall remain collectible. Such insurance policies shall provide for the payment of any final judgment received by any person or persons on account of the ownership, maintenance and use of said vehicle or any fault in respect thereto and shall be for the benefit of any person suffering loss, damage or injury as aforesaid. If any prepaid insurance premium is for less than one year, the license issued shall be for the period of the prepaid premium. Such license may be renewed on filing with the Municipal Clerk proof of payment for the continuation of said insurance.

§ 327-9. Fees.¹⁵⁶

The fees for the issuance of the license herein referred to shall be as provided in Chapter 168, Article II:

- A. For each taxicab licensed, up to a maximum of four, per year, or any fraction thereof.
- B. For each taxicab owner's license, which owner shall have five or more cabs operating in the Borough of Atlantic Highlands for all said taxicabs.
- C. For each taxicab driver's license, per year, or any fraction thereof.
- D. For any renewal of a taxicab license during the remaining year as provided for in § 327-8.

§ 327-10. Issuance, denial, revocation and suspension.

The Mayor and Council of the Borough of Atlantic Highlands may, in its discretion, refuse to issue or renew or may, after notice and hearing, revoke or suspend:

- A. Any license of either class if the applicant or licensee, within two years next preceding the filing of an application hereunder, or who, having obtained a license while said license is in effect hereunder, has been or is convicted of a crime involving moral turpitude in this or any other jurisdiction, or of being a disorderly person in this or any other jurisdiction, or of reckless driving or whose driving

¹⁵⁶Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

privileges have been revoked in this or any other state, or who violates any provision of this chapter, or who has any judgment unsatisfied of record against him arising out of an automobile accident, or who has failed or fails to render reasonable, prompt, safe and adequate taxicab service, or who has not complied fully with all the requirements of this chapter for such class of license.

- B. Any taxicab driver's license if the applicant has any communicable or contagious disease.
- C. Any taxicab owner's license if the motor vehicle licensed or to be licensed by reason of unsafe or unsanitary condition is dangerous to the safety and health of the occupants or others, or if the policy of insurance required by this chapter or by any statute of New Jersey has once lapsed, or such coverage is not maintained at all times.
- D. Any license of either class if the driver shall accept any passenger for transportation from any point or place other than a fixed taxi stand designated by the Mayor and Council for such taxicab unless such passenger has requested transportation at the regularly operated taxicab office or terminus of the particular taxicab involved or without the solicitation of the driver, owner or anyone on their behalf has requested transportation requiring the driver to immediately pick up the passenger from a point or place where the passenger is situated.

§ 327-11. License to be displayed.

Each applicant granted a taxicab driver's license shall be issued a license card in evidence thereof in a form approved by the Mayor and Council of the Borough of Atlantic Highlands and signed by the Municipal Clerk in his behalf. Said license card shall, at all times, be carried by the driver while operating a taxicab. In addition, the owner of the taxicab shall furnish a card with the name of the driver which shall at all times be prominently displayed and adequately posted in the interior of any taxicab operated by the licensee so that the face thereof shall be at all times in full view and plainly legible to any passenger seated on the rear seat of such taxicab, and there shall be affixed to such card in full view of such passengers a photograph of a size not less than 1 1/4 inches in height and 1 3/4 inches in length, of such licensed driver, together with a photograph of the licensed owner of such taxicab of the same size, and each of such photographs shall have indicated thereon the words "Licensed Taxicab Owner" or "Licensed Taxicab Driver," as the case may be.

§ 327-12. Lapse of insurance.

The operation of any taxicab pursuant to this chapter shall be permitted and shall be lawful only so long as the applicable liability insurance policies prescribed by this chapter shall remain in full force to the full and collectible amount stated in said policies.

§ 327-13. Words to be displayed.

Every taxicab so licensed shall have conspicuously located on the exterior thereof the words "Taxi," "Cab" or "Taxicab."

§ 327-14. Violations of rules and regulations.

The violation by the taxicab owner or the taxicab driver of any rules, regulations, special rulings and findings which are hereafter promulgated by the Mayor and Council of the Borough of Atlantic Highlands and included within a resolution or resolutions adopted by said governing body, shall be sufficient cause for suspension or revocation of any license granted to such taxicab owner or driver pursuant to this chapter and shall be sufficient cause for the refusal by the Mayor and Council to renew such license, in addition to any and all other grounds heretofore specifically mentioned in this chapter.

§ 327-15. Taxicabs licensed outside of Borough.

Owners and drivers of taxicabs licensed out of the jurisdiction of this Borough may be allowed to enter their taxicab in this Borough, but on specific call only, whether transporting a passenger within this Borough to a point outside the Borough limits or discharging a passenger transported from a point outside the Borough limits to a point within the Borough limits, and the name of the passenger so calling him shall be given by the owner or driver when requested by the Borough police or other lawful persons. Such taxicabs shall not be parked in this Borough, nor shall the drivers thereof cruise on the streets of this Borough at any time for the purpose of soliciting passengers; provided, however, that the same or similar substantial reciprocal rights are granted to owners and drivers of taxicabs licensed in this Borough by the municipalities in which the aforesaid owners or drivers are licensed.

§ 327-16. Violations and penalties.

Any person or persons who shall violate any of the provisions of this chapter shall, upon conviction thereof, be subject to a fine not exceeding \$200 or imprisonment in the county jail for a term not exceeding 90 days, in the discretion of the Judge by whom such person is convicted.

Chapter 340**TREES**

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 12-13-1995 by Ord. No. 21-95. Amendments noted where applicable.]

GENERAL REFERENCES

Property maintenance — See Ch. 265.

Streets and sidewalks — See Ch. 317.

§ 340-1. Establishment.

The regulation, planning, care and control of shade and ornamental trees upon and in streets, highways, public places, parks and parkways of this municipality, other than county parks and parkways, shall be managed by and under the control and the authority of a Commission which shall be known as the "Shade Tree Commission of the Borough of Atlantic Highlands," in accordance with N.J.S.A. 40:64-1 et seq.

§ 340-2. Membership; qualifications; compensation.

- A. The Shade Tree Commission shall consist of no less than five and no more than seven members and a maximum of two alternate members for a total of no more than nine members who shall be appointed by the Mayor, shall be residents of the Borough, and shall serve without compensation except as hereinafter provided. **[Amended 12-15-2022 by Ord. No. 14-2022]**
- B. The first Commission shall be appointed within 60 days after this chapter shall be effective, and said Commission shall organize within 30 days after the appointment of its membership for the remainder of the then calendar year and, thereafter, annually.
- C. The Commission shall select one of its members as Chairman annually, and the Commission shall appoint a Secretary, who need not be a member of the Commission. The salary for the Secretary shall be fixed by the Borough Council.

§ 340-3. Terms of office; vacancies.

- A. The term of office of each member shall commence upon the day of appointment, and, in the case of the original Commission, the five members shall be appointed for one-year, two-year, three-year, four-year and five-year appointments, respectively. Said terms on the original appointment shall be from the day of appointment until December 31 of the next calendar year. The names of the appointees and their specific terms must be set forth in the appointment by the Mayor.
- B. The terms of office of the alternate members shall commence upon the day of appointment, and said appointees will be designated as "Alternate No. 1" and "Alternate No. 2," and, in the case of the original appointees, Alternate No. 1 will serve from the day of appointment until December 31 of the next calendar year, and Alternate No. 2 will serve from the day of appointment until December 31 in the second calendar year. The names of the appointees and their specific terms shall be set forth in the appointment by the Mayor.
- C. All subsequent appointments after the original appointments, except to fill vacancies, shall be for full

terms of five years, or for two years as to the alternates, each to take effect on January 1.

- D. Any vacancy occurring by reason of death, resignation or removal of any Commissioner shall be filled for the unexpired term by the Mayor.

§ 340-4. Powers.

Said Commission shall possess and be vested with the powers as per N.J.S.A. 40:64-5, including:

- A. To exercise full and exclusive control over the regulation, planting, and care of shade and ornamental trees now located or which may hereafter be planted in any public highway, park or parkway, including the planting, trimming, spraying, care and protection thereof.
- B. To regulate and control the use of the ground surrounding the same so far as may be necessary for their proper growth, care and protection.
- C. To move or require the removal of any tree or part thereof on public or private property that is dangerous to public safety.
- D. To make, alter, amend and repeal, in the manner prescribed for the passage, alteration, amendment and repeal of ordinances by the Borough Council, any and all ordinances necessary or proper for carrying out the provisions hereof.¹⁵⁷
- E. To administer treatment to or remove any tree on public or private property which is believed to harbor a disease or insects readily communicable to neighboring healthy trees and to enter upon private property for that purpose, provided that the suspected condition is first properly confirmed.
- F. To study and recommend methods of funding, outside of municipal taxation, by grants and aid, both state and federal.
- G. To develop a program of tree planting and overall beautification in areas along the public right-of-way and to prepare a survey of existing trees within the public right-of-way and upon public property and to develop a master plan for the care and control of existing shade trees and ornamental trees and the planting of new trees throughout the Borough, said survey and master plan shall be submitted to Borough Council for its review and approval annually, by February 1 of the next succeeding year.
- H. To provide a procedure for removing or trimming existing trees where necessary because the tree is either dead, diseased or injured by storm or similar consequences.
- I. To adopt and administer regulations for the selection and placement of trees and as may be necessary for the interpretation, administration, and enforcement of the powers and authority of the Commission.

§ 340-5. Public improvements affecting trees.

No statute giving any person or governmental board, body or official the power or authority to lay any sidewalk along or to open, construct, curb or pave any street or to do any similar act shall be construed to permit or authorize any interference with or injury to a street shade tree without the consent of the Commission. The Commission shall reasonably cooperate with such person, board, body or official for the public good.

157.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 340-6. Annual appropriation.

- A. During December in each year, the Commission shall certify to the Borough Council the estimated sum necessary for the proper conduct of its work during the ensuing fiscal year, to include the sums estimated for such of the following items as it is anticipated expenditure will be made for, that is:
- (1) Payment of wages and salaries of employees.
 - (2) Expenses of Commission members in discharging official duties, including expenses incident to attendance at professional meetings.
 - (3) Purchase of trees and shrubbery.
 - (4) Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work, including expenses for tree trimming and removal.
- B. The Borough Council shall annually appropriate such sum as it may deem necessary for said purposes.
- C. The Commission may accept gifts or donations from public-spirited citizens for use for Commission purposes.

§ 340-7. Public tree care; removal of injurious trees. [Amended 1-28-2021 by Ord. No. 03-2021]

- A. The Borough or Commission shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to provide to public safety or to preserve or enhance the symmetry and beauty of such public grounds. There shall be no charge to residents for a tree planted by the Borough. A resident is permitted to request a planting of a tree or trees for which he/she wishes to make as a donation for covering costs.
- B. The Borough or Commission may immediately remove or cause or order to be removed any tree or part thereof which poses a threat to public safety because it is in any unsafe condition or is injurious to sewer lines, gas lines, waterlines or other public improvements or is affected with any injurious fungus, insect or other pest. If public safety requires immediate removal of a tree, no notice to any property owner shall be necessary.
- C. Before any request for proposal is issued by the Borough in connection with any street or sidewalk project which would call for the removal of more than 10% of the total number of trees located within the bounds of any public right-of-way in the designated project area, the Borough shall:
- (1) Obtain a written report of an arborist possessing any credentials required by law as to the health of the trees located on the street which may be identified for removal in connection with said project and suggest possible means of conservation for the engineer;
 - (2) Hold a public workshop session concerning the pertinent details of the project and make available for public inspection any nonprivileged engineering and arborist's reports concerning the project; and
 - (3) Notify residents in the affected project area by mail (in a prominently marked envelope with the wording, "Official Borough Business - Time Sensitive Information") no less than 10 calendar days prior to the above-mentioned public workshop. Other notifications, such as posting on social media platforms or push notifications, if available, via the Borough website, may also be

utilized.

- D. A resident has the right, for good reason, to object to the planting of a tree in front of his residence, which objection will be considered and the final determination shall be made by the Commission.

§ 340-8. Tree topping.

It shall be unlawful as a normal practice for any person or firm to top any street tree, park tree or other tree on public property. "Topping" is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this chapter at the determination of the Commission.

§ 340-9. Pruning; corner clearance.

Every owner of any tree overhanging any street or right-of-way shall prune the branches so that such branches shall not obstruct the view of any street intersection and shall not obstruct the light from any street lamp and so that there shall be a clear space of eight feet above the surface of the street or sidewalk. Said owners shall remove all dead, diseased, or dangerous trees or broken or decayed limbs which constitute a menace to the safety of the public. The Borough or Commission shall have the right, but not the obligation, to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a streetlight, visibility of any traffic control device or sign, or passage on a public street or sidewalk.

§ 340-10. License required for arborists; exceptions.¹⁵⁸

Any person or firm engaged in the regular and primary business or occupation of pruning, treating or removing trees must first apply for and procure a license in order to work within the Borough. The license fee shall be paid in advance, in such amount as provided in Chapter 168, Article II. No license shall be required of any public service company or Borough department doing such work in pursuit of their public service endeavors nor from any private property owner performing work on his property either by the owner or some agent, casually engaged by the owner, whose primary occupation is not tree removal or pruning or arborist work.

§ 340-11. Ownership; approval required prior to work by property owners on curbside trees. [Amended 1-28-2021 by Ord. No. 03-2021]

Trees planted or existing between the curbline and the sidewalk abutting property, or abutting the street or curbline where no sidewalk is present, are the responsibility of the property owner, subject, however, to the authority of the Shade Tree Commission as provided in this section. The property owner is required to maintain the area between the curbline and the sidewalk and the area abutting the street or curbline where no sidewalk is present. The abutting property owner may plant street trees in this area, provided the consent of the Commission is obtained and the selection and location is in accord with Commission rules.

§ 340-12. Attachment of items to curbside trees prohibited.

It is unlawful to attach, in any manner, chains or signs of any sort to any curbside tree or to place nails into any curbside tree.

¹⁵⁸Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 340-13. Violations and penalties; enforcement.

- A. The Commission may prescribe a fine for the violation of each of its ordinances and regulations in an amount not exceeding \$1,500 for each violation, and the Atlantic Highlands Municipal Court shall have jurisdiction over actions for the violation of ordinances or regulations of the Commission.
- B. The ordinances and regulations shall be enforced by like proceedings and process, and the practice for the enforcement thereof shall be the same as that provided by law for the enforcement of the ordinances of the Borough.
- C. In addition, the Commission shall have the right to require any person who removes or destroys a tree in violation of ordinance and regulation to pay a replacement assessment as per N.J.S.A. 40:64-12.

§ 340-14. Limitation of liability.

Nothing contained in this chapter shall be construed to make the Shade Tree Commission or any member thereof, or the Borough, responsible for the death or injury of any person or for any injury to any property or highway tree or shrub.

Chapter 346**VEHICLES, ABANDONED**

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 6-16-1993 by Ord. No. 29-93; amended in its entirety 3-8-2006 by Ord. No. 04-2006. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Vehicles and traffic — See Ch. 139.

§ 346-1. Definitions.

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

ABANDON — With respect to public streets, private property, public highways and public property, any vehicle which:

- A. Is parked out of doors without the current year's registration or identification markers as required by law;
- B. Is so disabled as to constitute an obstruction to traffic and the driver or person owning or in charge thereof neglects or refuses to move the same to a place where it will not obstruct traffic;
- C. Is found to be mechanically inoperative; or
- D. Is found without one or more tires.

MOTOR VEHICLE — Automobile, omnibus, road tractor, trailer, truck, truck-tractor and vehicle as defined in N.J.S.A. 39:1-1.

§ 346-2. Abandonment prohibited.

It is unlawful to abandon a motor vehicle on any public street or highway of the Borough or on any property which is owned, leased, or maintained by the Borough or to abandon, permit or suffer the abandonment of any motor vehicle on any private property unless garaged.

§ 346-3. Exceptions.

This chapter shall not apply to any owner of a motor vehicle who has received a permit for motor vehicle sale or repair issued upon written application and acceptance of same, from the Code Enforcement officer or designee, for those circumstances where:

- A. Sale: a single motor vehicle is being held for sale, by the owner, for a period not to exceed 30 days, during the three-hundred-sixty-five-day period from the initial date of offering, unless extended by permit from the Code Enforcement Officer as outlined in § 346-4.
- B. Repair: a single motor vehicle is being held for repair for a period not to exceed 30 days from the original date of disability, becoming mechanically inoperative, or while waiting for appraisal as a result of an insurance claim, unless extended by permit from the Code Enforcement Officer as

outlined in § 346-4.

- C. Commercial establishment: motor vehicles are being stored on the private, commercial property on which a duly licensed and authorized motor vehicle repair facility, is being operated.

§ 346-4. Extensions by permit; fees.

- A. A permit may be issued by the Code Enforcement Officer for an extension of the time periods set forth in this § 346-4, upon written application and acceptance of same and upon the payment of the fees as provided in Chapter 168, Article II.¹⁵⁹
- B. No extension shall be granted past 60 days.

§ 346-5. Removal by Police Department.

Whenever any member of the Borough Police Department finds any motor vehicle abandoned on any public street, public highway or public property, he may take possession by removing it to such place as may be designated by the Chief of Police or by securely placing a written notice on the motor vehicle which states that the Borough Police Department has taken possession and the motor vehicle shall be removed from the public street, public highway or public property.

159.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

WATER AND SEWER

Chapter 353

WATER AND SEWER

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 11-22-1977 by Ord. No. 713; amended in its entirety 6-28-2006 by Ord. No. 09-2006]

GENERAL REFERENCES

Certificates of occupancy — See Ch. 128.

Housing standards — See Ch. 200.

Uniform construction codes — See Ch. 136.

Sewer use — See Ch. 285.

Development regulations — See Ch. 150.

Streets and sidewalks — See Ch. 317.

ARTICLE I
(Reserved)¹⁶⁰

§ 353-1. through § 353-4. (Reserved)

160. Editor's Note: Former Art. I, Sewerage Authority, as amended, was removed pursuant to Ord. No. 02-2014, adopted 2-12-2014, which dissolved the Atlantic Highlands – Highlands Regional Sewerage Authority.

ARTICLE II
Water Department

§ 353-5. Water rates. [Amended 6-25-2008 by Ord. No. 06-2008; 12-8-2010 by Ord. No. 20-2010; 2-23-2011 by Ord. No. 03-2011]

- A. Each unit shall be charged for water use in accordance with the schedule in Chapter 168, Article II.
- (1) A "unit" shall mean a single-family residence, an apartment, a rented room with private bath facilities, a school or any building receiving water service not included in the above definition.
- (2) Where there is more than one unit for one water meter, the applicable rate per unit shall be determined by dividing the total metered quarterly consumption by the number of units.
- B. Second meters. All second meters shall be installed at the expense of the property owner and used for outside watering only, including but not limited to sprinkling systems, filling swimming pools, washing cars, etc., and shall be charged at normal rates with the following exception: During the regular quarterly reading, any second meter with a zero consumption between the previous and the current readings, shall not be charged a fee or minimum charge for the quarter.
- C. The quarterly standby charge for sprinkler service, in addition to quarterly usage, shall be as provided in Chapter 168, Article II.

§ 353-6. Liability for payment; interest on unpaid bills.

- A. The owner of any house, tenement, building or lot shall be liable for the payment of the price, rent or service charge as heretofore or hereafter fixed by ordinance or ordinances of the Borough for the use of water facilities by such owner or by the occupier, and the price or rent so fixed and the other costs, expenses, interest and penalties shall be a lien upon the house, tenement, building or lot until paid and satisfied.
- B. Additional charges for unpaid bills.
- (1) In addition, should the water and/or sewer charges remain unpaid for 30 days after bills for the same have been rendered, there shall be added to such charges, as interest, a sum equal to 8% per annum on the first \$1,500 and 18% per annum on any amount in excess of \$1,500, the amounts to be calculated from the date the water and/or sewer charges were payable until the date of actual payment.
- (2) In addition, should the water and/or sewer charges remain unpaid for 30 days after bills for the same have been rendered, the water may be shut off for the premises until all arrears, together with interest, have been paid in full.
- C. The Water Department shall assess an estimated quarterly charge to the owner of any house, tenement, building or lot in the event that: **[Amended 12-18-2019 by Ord. No. 19-2019]**
- (1) The water meter is not read, or cannot be read by an employee or agent of the Water Department;
- (2) The officials of the Water Department and/or the Business Administrator deem it proper to assess an estimated quarterly charge.
- D. The assessment herein prescribed estimated quarterly charge shall be based upon the water usage of

the corresponding quarter of the year preceding the imposition of the estimated quarterly charge.
[Amended 12-18-2019 by Ord. No. 19-2019]

- E. All ratepayers shall be notified of an estimated bill, or any change in the normal billing procedures, in writing, on their quarterly billing statement. **[Added 12-18-2019 by Ord. No. 19-2019]**
- F. Any change in normal billing procedure, such as the issuance of an estimated quarterly bill, shall be presented to the Mayor and Council by the Business Administrator for review regarding the reason and necessity for the change to the billing procedure in any billing quarter where this may occur. **[Added 12-18-2019 by Ord. No. 19-2019]**

§ 353-7. Furnishing of meters; costs.

All stock meters 5/8 inch in size shall be furnished by the Borough at its cost to the property owner. All additional meters shall be furnished by the Borough, and charged to the property owner at its cost plus 10%.

§ 353-8. Meter connection.

It shall be the duty of the owner of each property having a service pipe connection with the water main, upon notice being mailed to the last known address of such owner by the Superintendent of the Water Department, to cause suitable water connections to be made forthwith. The meters shall be placed within the building or otherwise enclosed in a place convenient for reading and inspection, shall be protected from damage by frost or other cause and shall be kept free from obstruction. The connection shall be made in accordance with the regulations of the Water Department, and a hard stop will be constructed on each side of the meter. All openings in the service pipe shall be on the outlet side of the meter. Should any owner refuse or neglect to have such meter connections made within 10 days after the mailing of the notice aforesaid or should he neglect or refuse to comply with the terms of this article, the Borough may refuse to sell and deliver water to such owner until the provisions of this section shall have been complied with, and the water may be turned off from the premises.

§ 353-9. Access to meters.

The Superintendent of the Water Department and his authorized employees shall have free and clear access at all reasonable hours to all meters for the purpose of reading, removing, repairing, testing and for any other lawful purpose.

§ 353-10. Liability for damages.

The owner of the property within which any meter may be located shall be liable for any damage done or resulting to such meter, except for damage done by employees of the Water Department. In the event that the owner should refuse or neglect to pay such damage, the water may be shut off from the premises and not supplied until such damage shall be paid. Such damaged meter shall be repaired by the Water Department at the expense of the owners aforesaid. The cost of such repair shall be collected in the same manner as the water rent.

§ 353-11. Maintenance of curb box and stopcock.

It shall be the duty of each property owner to keep in good repair and condition the street curb box and stopcock. Upon notice being mailed to the last known address of any owner by the Superintendent of the Water Department, such property owner shall forthwith make such repairs, resetting, raising or lowering of

the street curb box and stopcocks as may be necessary under the direction of the Water Department. Upon the refusal or neglect of any such owner to comply with the requirements of this section within 30 days after mailing of the notice aforesaid, the Superintendent of the Water Department may cause the same to be done, and the cost of the work so done and of the material furnished shall be charged against the property upon which work was done and shall remain a lien and be collected in the same manner as the water rent, provided that where street or sidewalk grades or lines shall be changed after the water connection shall have been made, the expense of the first resetting shall be borne by the Borough.

§ 353-12. Setting and removing meters.

Only employees of the Water Department shall make repairs on meters. Plumbers shall set and remove meters at the property owner's expense after first obtaining written permission from the Superintendent of the Water Department.

§ 353-13. Notice of vacation or occupancy of property.¹⁶¹

When any property shall be vacated between November 1 of any year and March 1 of the following year, the owner thereof shall give at least 24 hours' notice of the vacating of such premises to the Superintendent of the Water Department in order that the water may be turned off at the street curb, and upon the reoccupancy of such premises, the owner shall give at least 24 hours' notice thereof to the Superintendent in order that the water may be turned on; and for this service, when done by the Water Department, the owner of the premises shall pay such fee as provided in Chapter 168, Article II, to be collected in the same manner as the water rent.

§ 353-14. Regulations on water sprinkling.

The Superintendent of the Water Department may from time to time make reasonable regulations with respect to water sprinkling when the supply of water is or may become insufficient for domestic household use and, to enforce such regulations, may shut off water on the property when the occupant may refuse or neglect to comply therewith.

§ 353-15. Authority for turning water on and off; maintenance of fixtures.

No person other than the Superintendent of the Water Department, or some person duly authorized by him or the Borough Council, shall be allowed to shut off or turn on the water in the public mains or to open the stopcocks which are under control of the Water Department, and all plumbers or persons engaged in making attachments thereto must leave the stopcocks closed until permission shall be granted by the Superintendent of the Water Department. The ferrule in the public main, the pipe, curb boxes, stopcock and the box attached thereto, and all like fixtures between the public main and the private pipes and fixtures, either on public or private property, shall be under the charge and subject to the directions of the Superintendent of the Water Department and shall be kept in good repair and condition at the expense of the owner or owners of the premises supplied, the expense to be collected in the same manner as the water rent.

§ 353-16. Opening stopcocks and valves.

No person except the Superintendent of the Water Department or other person authorized by him or the Borough Council shall open or close the stopcocks or valves in any public or private street main.

¹⁶¹Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 353-17. Access to premises for inspection.

The Superintendent of the Water Department or other persons authorized by him or by the Borough Council shall, at all reasonable hours, have free and clear access to all parts of the premises to which water may be supplied for the purpose of inspection, examination of fixtures and for any other lawful purpose, and no person shall resist or refuse such free access to the Superintendent of the Water Department or other persons authorized by him or by the Borough Council.

§ 353-18. Nonliability of Borough for damages due to lack of water supply.

All permits shall be granted upon the express condition that, if from any cause the supply of water shall fail, the Borough shall not be held liable for any damage that may arise in consequence thereof.

§ 353-19. Responsibility for maintenance of apparatus.

All persons who may be supplied with water from any of the Borough mains shall keep their own service pipes, curb boxes, stopcocks and apparatus in good condition and repair and shall protect them from frost at their own expense and shall prevent all unnecessary waste of water.

§ 353-20. Nonliability of Borough for damages due to shutoff of water.

The Borough shall in no way be liable for damage resulting by reason of the breakage of any service pipe, stopcock or other fixtures or for damages arising from shutting off water to repair mains and make private connection with the same; provided, however, that reasonable notice shall be given to persons using water for steam purposes.

§ 353-21. Water turnoff for nonpayment or violation.

In all cases where water shall be turned off for nonpayment of rent or for the violation of any provisions of this article or any of the rules and regulations relating to the use of water, it shall not be turned on again until all expenses incident to the turning off and turning on of the water, together with rent and interest thereon, or the fine which may be imposed shall be paid, and should the water be unlawfully turned on again without payment as herein provided, it shall be lawful for the Superintendent of the Water Department, the Borough Administrator or the Borough Council to cause the ferrule to be drawn, and it shall not be inserted again until all the arrears of rent or fines and penalties and all expenses in connection with the nonpayment or violation shall be paid.

§ 353-22. Fee for water turn on.¹⁶²

In every case where the water shall be turned off for nonpayment of water rent or for violation of any of the provisions of this article or rules or regulations of the Water Department, such sum as is provided in Chapter 168, Article II, shall become due and payable as an expense in addition to other expenses herein provided for and shall be paid before the water shall be turned on again.

§ 353-23. Authorization required to operate stopcocks or valves.

It shall be unlawful for any person to open or close any of the stopcocks or valves under the charge of the Water Department without being duly authorized by the Superintendent of the Water Department or his designee.

¹⁶²Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 353-24. Wasting water prohibited.

It shall be unlawful for any person to permit the water to flow unnecessarily from the part of the private pipe or fixtures thereof, or permit any waste of water on his or her premises or on the premises occupied by him or her, either within the building or enclosures, or any street or alley.

§ 353-25. Right of entry.

In the event that the Superintendent of the Water Department, the Borough Administrator, or the Borough Council shall have reason to believe that there is actual or probable violation, evasion or disregard of the provisions of this article or of any of the rules and regulations relating to the distribution of water to any building or premises into or through which pipes for conducting a supply of water may be laid, it shall and may be lawful for the Superintendent of the Water Department or other persons duly authorized by him or the Borough Council to enter at all reasonable times such building or premises for the purpose of examination of the pipes of conduit or other fixtures to ascertain whether the same are in proper condition and repair or for cutting off pipes of communication or for shutting off the stopcocks or attaching ferrules when water rent remains unpaid as aforesaid. It shall be unlawful for any person to resist or oppose the making of such examinations as hereinabove set forth or the doing of such work as hereinabove set forth.

§ 353-26. Service limited to single premises; exception.

- A. Where a service pipe has been laid on a premises, water shall not be taken therefrom to supply any other premises, notwithstanding that the ownership of both may be in one and the same person.
- B. The Borough Council may, if it deems advisable, upon application, make appropriate provisions for supplying water to property in front of which no main exists.

§ 353-27. Permit required for alterations.

No person shall be allowed to attach to, alter or extend any service pipe or make any alterations in any corporation cock or curb box, or do any other work for the purpose of increasing the facilities for obtaining water, except upon first securing a permit therefor from the Superintendent of the Water Department the Borough Administrator, or from the Borough Council.

§ 353-28. Opening fire hydrants.

No person, except firemen in the discharge of their duties or other person lawfully authorized to do so, shall open or in any other manner interfere with any fire hydrant.

§ 353-29. Water tapping fee.¹⁶³

Water taps will be made by authorized persons of the Water Department or, at the discretion of the Water Department, by a licensed plumber authorized in writing to make the tap. The fee for all water taps will be as provided in Chapter 168, Article II, for up to a one-inch water tap. In addition, an administrative fee as provided in Chapter 168, Article II, will be charged for inspection purposes, if the tap is not made by the Water Department. In all cases, the property owner shall provide all necessary street work.

§ 353-30. Violations and penalties.

Any person(s) who is found to be in violation of any provision of this article shall be subject to a fine not

¹⁶³Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

to exceed \$1,500.

ARTICLE III
Sewer Department

§ 353-31. Connection requirements.

It shall be unlawful to make any connection with the sewer system of the Borough without having first secured a permit therefor and upon payment of the required fee. Applications shall be made to the Supervisor of the water and sewer system and shall be accompanied by a statement as to the purpose of the connection, the premises to be served and the specifications of the pipe to be connected and the specifications of the drain from the building to the sewer pipes.

§ 353-32. Sewer tapping fee. [Amended 2-23-2011 by Ord. No. 03-2011]

Sewer taps will be made by a licensed plumber authorized in writing to make the tap. A supervision fee as provided in Chapter 168, Article II, will be charged. The property owner shall provide all labor and material necessary for the sewer tap, including all necessary street work.

§ 353-33. Compliance with certain regulations.

The provisions of all applicable ordinances relating to excavations in streets shall be complied with in making excavations in streets or other public places relative to making sewer connections.

§ 353-34. Sewer rates.

- A. Subject to the following exceptions, each unit with sewer service including any unit connected directly to the Township of Middletown Sewer Authority, shall be charged in accordance with the schedule provided in Chapter 168, Article II. **[Amended 6-25-2008 by Ord. No. 06-2008; 12-8-2010 by Ord. No. 20-2010; 2-23-2011 by Ord. No. 03-2011]**
- B. A "unit" shall mean a single-family residence, an apartment, a rented room with private bath facilities, a school, a separate building connected to the sanitary sewer system or a business with separate toilet facilities.
- C. Quarterly consumption of water in gallons shall be measured per unit in the same manner as § 353-5, Water rates.
- D. Exceptions.
 - (1) Any unit with sewer service which receives all or part of its water supply from a source other than the Borough, such as a private well, shall install at the owner's expense a water meter as directed by the Borough. The annual sewer rate shall be 142% of the water rate applicable as if the Borough were supplying the water.
 - (2) Any school shall be charged a flat rate per annum, effective with all buildings based upon readings made on and after January 1, of each year, as provided in Chapter 168, Article II. **[Added 9-12-2007 by Ord. No. 19-2007; amended 12-12-2007 by Ord. No. 27-2007; 2-23-2011 by Ord. No. 03-2011]**

§ 353-35. Quarterly billing.

Bills for all users will be rendered quarterly. Users will be notified of the rate and that portion of the wastewater charge which is attributable to wastewater treatment services.

§ 353-36. Violation of rules and regulations.

Any person violating any of the provisions of these rules and regulations shall become liable to the Borough for any expense, loss or damage occasioned by the Borough by reason of such violation. All violations will be subjected to review by the Water and Sewer Supervisor, Borough Administrator and/or Borough Council.

§ 353-37. Replacement account. [Amended 2-23-2011 by Ord. No. 03-2011]

The amount of revenue required to fund the replacement account for the sanitary sewer system shall be determined as set forth in Appendix I, on file in the Clerk's office.

§ 353-38. Definitions.

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

APARTMENT — A room or suite of rooms occupied as a home for one or more persons.

DWELLING — Any house or building, not a lodging house, rooming house or inn, all or part of which is occupied as the home or residence of a family or of two or more families living independently of each other and having no common right or use of any hall, stairway, cellar and water closet; and whether such house is singly or as a part of a double house, or in conjunction with others in an attached or semiattached row, it shall be deemed a separate "dwelling" and thus a separate unit.

ROOMING HOUSE — Includes any house or building or portion thereof, not a hotel, and in which persons or single individuals, or as families, are harbored, or received, housed or lodged, for hire or otherwise, for a single day or night or for a longer period of time, provided that this shall not include a dwelling where less than five persons are so received and lodged.

§ 353-39. Liability for payment of fees, rents and service charges.

The owner of any house, tenement, building or lot shall be liable for the payment of the fee, rent or service charge as heretofore or hereafter fixed by ordinance or ordinances of the Borough for the use of sewer facilities by such owner or by the occupant, and the fee or rent so fixed and the other costs, expenses, interest and penalties shall be a lien upon the house, tenement, building or lot until paid and satisfied.

§ 353-40. Remedies for nonpayment.

The Borough shall have the right of shutting off the use of any user of the sewer or drain system of the Borough who is in arrears as to any such charges or rental for more than 30 days. The Borough shall also have the same relief, remedies and liens for the collection of such charges or rentals, with interest thereon and costs and penalties as may from time to time be provided by law, for the collection of taxes on real estate.

§ 353-41. Conditions for discharge of waste.

A. No person, firm or corporation shall discharge any waste or effluent into the sanitary sewerage system of the Borough unless the same shall meet the following conditions, including but not limited to below items, subject to state regulations:

- (1) Strong mineral acidity shall be absent; pH shall not be less than 5.0.
- (2) Caustic alkalinity shall be absent; pH shall not exceed 9.4.

- (3) Explosive substances shall be absent.
- (4) Flammable substances shall be absent.
- (5) Temperature at the point of discharge shall not exceed 150° F.
- (6) Grease, oil and/or wax solidifying and/or becoming viscous at temperatures between 32° and 150° F. shall be absent.
- (7) Grease, oil and/or wax in solution and/or emulsion shall be absent.
- (8) Insoluble substances shall not exceed a daily average of 500 parts per million.
- (9) Dissolved substances shall not exceed a daily average of 500 parts per million.
- (10) Gases and/or vapors, either free or occluded, shall be absent in concentrations toxic to humans, animals and aquatic life in streams.
- (11) Soluble substances shall be absent in concentrations toxic to humans.
- (12) Insoluble substances shall be absent in concentrations toxic to humans, animals and aquatic life in streams.
- (13) Chlorine demand average shall not exceed 20 parts per million.
- (14) Biochemical oxygen demand [five-day, 20° C.] average shall not exceed 500 parts per million.
- (15) Total sulfides shall not exceed two parts per million.
- (16) Antiseptic substances shall not exceed two parts per million.
- (17) Phenols shall not exceed 0.005 part per million.
- (18) Oxygen-consuming substances shall not exceed 500 parts per million.
- (19) Toxic and/or irritating substances creating hazardous health and safety conditions shall be absent.
- (20) Grease and/or oil shall not exceed daily average of 25 parts per million.
- (21) No substances shall be present in sufficient quantity to cause hazardous conditions.
- (22) No substance shall be present in sufficient quantity to interfere with biological processes.
- (23) Substances must be absent which the Borough, now or hereafter, finds to be harmful.

B. The discharge of any waste or effluent not meeting the foregoing conditions is hereby prohibited.

§ 353-42. Prohibited substances.

No person, firm or corporation shall discharge any waste or effluent into the sanitary sewerage system of the Borough containing any or consisting of the following substances, such discharge being and the same is hereby prohibited:

- A. Gasoline, naphtha, petroleum products or any substances which may create an explosion hazard in the system.

- B. Oils, fats or grease except as may result from household use. The owners of any installation, except private dwellings, from which oils, fat and grease are liable to be discharged into the sanitary sewers shall, at their own expense, install and properly maintain a grease trap of a type approved by the Borough Engineer.
- C. Stormwater, surface water, groundwater, roof runoff, subsurface drainage, cooling water or unpolluted industrial process waters to any sanitary sewer.
- D. Rubbish, ashes, cinders or garbage, except such kitchen wastes as shall have been ground or chopped by mechanical devices or appliances.
- E. Brewery or distillery waste in any form.
- F. In addition to the foregoing, any waste or substance which shall cause or result in:
 - (1) Chemical reaction, either directly or indirectly, with the materials of construction so as to impair the strength or durability of any sewer structure.
 - (2) Mechanical action that will destroy or damage the sewer system structure.
 - (3) Restriction of the hydraulic capacity of sewer structures.
 - (4) Restriction of normal inspection or maintenance of the sewer structure.
 - (5) Placing unusual demands on the sewage treatment equipment or process.
 - (6) Limitation of effectiveness of the sewage treatment process.
 - (7) Danger to public health and safety.
 - (8) Obnoxious conditions inimical to the public interest.

§ 353-43. Commercial and industrial waste.

- A. No industrial waste shall be discharged into the sanitary sewerage system of the Borough unless approval shall have first been obtained from the proper authority, as hereinafter set forth. In no event shall waste so discharged be other than that which meets the conditions set forth in §§ 353-41 and 353-42.
- B. In the event that any industry contemplates operation within the area served by the Borough, the industry must seek preliminary approval from the Borough. They shall state the nature and the quantity of wastes and submit a bacteriological and chemical analysis for study by a consulting sanitary engineer employed or to be employed by the Borough. If, in the opinion of the consulting engineer, pretreatment is necessary, the following procedure shall be followed:
 - (1) Plans, specifications and other pertinent information relating to the proposed preliminary treatment facilities shall be submitted to the Borough for examination by the consulting engineer representing the Borough. Such plans shall show the proposed method of treatment, the result to be obtained, the type of recording gauge to be provided, the type of weir and appurtenances, information as to whether the recording will be done by ink or pencil and the period of time each chart will record the flow. Storage facilities shall be provided for peak flows with provisions for controlled discharge to the sewer system. Where preliminary facilities are provided for any wastes or waters, they shall be maintained by the owner at his expense.

- (2) The owner of any property or any industry served by a building sewer, producing and carrying industrial waste, shall install a suitable control manhole in the building sewer to facilitate observation, sampling and measuring of the waste. Such manhole, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the consulting engineer employed by the Borough. The manhole shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times. All measurements, tests and analysis of the characteristics of waters and waste to which reference is made in this section shall be determined in accordance with the Standard Methods for the Examination of Water and Sewage and shall be determined at the control manhole provided or upon suitable samples taken at the manhole.
 - (3) The consulting engineer and other duly authorized employees of the Borough bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation and measurement, sampling and testing in accordance with the provisions of this section.
 - (4) If, in the opinion of the consulting engineer, the effluent is not in accordance with the approval granted under the plans and specifications covering the pretreatment plant, the Borough reserves the right to immediately stop the discharge by the serving of a written notice stating the nature of the violation.
- C. Definitions. For the purpose of this section, "commercial and industrial waste" shall mean liquid or other wastes resulting from any processes of industry, manufacture, trade or business, including from the commercial preparation of food from any restaurant or catering facility, or from the development of any natural resources.
- D. Grease, oil and sand interceptors shall be provided when in the opinion of the appropriate Borough official they are necessary for the proper handling of commercial or industrial liquid wastes containing grease and/or dough in excessive amounts, or any flammable wastes, sand and other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Borough and shall be located as to be readily and easily accessible for cleaning and inspection. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable covers which when bolted in place shall be gastight and watertight. Where installed, all grease, oil and sand interceptors shall be cleaned and maintained by the owner and/or tenant at his expense as often as necessary to insure continuous efficient operation at all times.
- E. All waste material from interceptors must be disposed of in a proper manner by properly licensed contractors. The owner/tenant must obtain, and retain available for inspection for at least three years, adequate documentation demonstrating the proper removal and disposal of the waste material by a qualified contractor, and provide this documentation upon request of the Borough inspectors. The Borough shall have the right to inspect the interceptor system and disposal documentation at any reasonable time for purpose of determining compliance.

ARTICLE IV
Administration and Enforcement

§ 353-44. Limit of Borough responsibility.

The Borough of Atlantic Highlands shall not be responsible for the construction or maintenance of the water distribution system or the sewerage collection lines beyond the main.

§ 353-45. Interest charge for nonpayment of bills.

Any person who has not paid the bill rendered by the Borough for any of the provisions of this chapter within 30 days after the billing date shall be responsible for paying interest thereon. Interest charges shall be at the rate of 8% per annum and shall start accruing 30 days after the billing date.

ARTICLE V

Water and Sewer Connection Fees**§ 353-46. Residential unit. [Amended 9-12-2007 by Ord. No. 19-2007; 12-12-2007 by Ord. No. 27-2007]**

- A. For each new residential unit that uses the water and/or sewer system of the Borough, there is established connection fees as provided in Chapter 168, Article II, for the right to use the existing water and/or sewer facilities
- B. For purposes of this section, a "new residential unit" shall mean any new residential area, including but not limited to an apartment, cooperative apartment, condominium, mobile home, rented room with separate bath facilities, and single-family house, which unit is created either by new construction, or by conversion from an existing use. Included within the definition of "new residential unit" is a condominium or cooperative apartment created by conversion from an existing rental building, and an apartment created within an existing single-family house.

§ 353-47. Nonresidential unit.

For each new nonresidential unit that uses the water and/or sewer system of the Borough, there is established the following connection fees for the right to use the existing water and/or sewer facilities:¹⁶⁴

- A. Projected water and/or sewer flows will be calculated by the applicant, and will be subject to review and approval by the Borough Engineer.
- B. For purposes of this section, a "new nonresidential unit" will be any new nonresidential area, including any new office or business with separate toilet facilities, created by new construction or by conversion from an existing use.
- C. No sewer connection fee is due for a new unit that is not connected to the Borough Sewer facility. No water connection fee is due for a new unit that is not connected to the Borough Water facility. A connection fee is due if such a new unit thereafter does connect.

164. Editor's Note: Former Subsection A, Water connection fee, and Subsection B, Sewer connection fee, were deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE VI
Use of Public Sewers and Connection Thereto

§ 353-48. Prohibited discharge.

It shall be unlawful to discharge to any natural outlet within the Borough or in any area within the Borough any sewage or other polluted waters, except where suitable treatment approved by the Borough has been provided.

§ 353-49. Required connections.

- A. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage on any improved lot within the Borough when the lot property line is within a two-hundred-foot radius of a public sanitary sewer line.
- B. The owner of each house, building, or lot actually or customarily used for human occupancy, employment, recreation or other purposes, located within the Borough and having a lot property line within a two-hundred-foot radius of a public sanitary sewer line which currently exists or in the future may exist, is required at his expense to install and connect suitable sewage discharge facilities directly with the public sanitary sewer line in accordance with the provisions of this article within 120 days of notice being sent to the owner by the Borough.
- C. In the event it would be a hardship for the property owner to connect to a public sanitary sewer line, application may be made to the Borough by the property owner to continue the use of the private septic facility existing on the premises at the time of adoption of this chapter.
- D. No person unauthorized by the Borough shall uncover, make any connection with or opening into, use, alter or disturb any public sanitary sewer line or appurtenance without first obtaining a written permit from the Borough.
- E. The owner of property seeking to connect to the public sanitary sewer line or his agent shall make application on a form furnished by the Borough for a permit to install and connect suitable sewage discharge facilities directly with the public sanitary sewer line. The application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Borough. The permit and connection fees are as set forth in this chapter. In the alternative, the owner may elect to have the sewer connection fee billed quarterly in four equal quarterly installments within the first year. If so elected, each quarterly installment will have added a service fee as provided in Chapter 168, Article II. The initial quarterly water/sewer bill will be prorated as of the connection date.¹⁶⁵
- F. All costs and expenses incident to the installation and connection of a suitable sewage discharge facilities directly with the public sanitary sewer line shall be borne by the owner of the property. The owner shall indemnify the Borough from any loss or damage that may directly or indirectly be occasioned by the installation and connection of the suitable sewage discharge facility.
- G. Separate and independent suitable sewage discharge facilities shall be installed for every independent structure on any lot, except where one structure stands at the rear of another on an interior lot and it is in the judgment of the Borough impractical to install or no other private suitable sewage discharge facility is available or can be installed or connected to a public sanitary sewer line. In such case, the

165.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

suitable sewage discharge facility from the structure most practically located, in the judgment of the Borough, shall serve both or whichever structures the Borough deems necessary on the lot or lots.

- H. Existing suitable sewage discharge facilities may be connected to the public sanitary sewer line upon application, examination, testing and approval by the Borough.
- I. The size, slope, alignment, materials of construction, placing of pipe, joining, testing, excavation and backfilling of a trench, of a suitable sewage discharge facility shall conform to the requirement of the building and plumbing code of the state and the Borough. All such installations and connections to the public sanitary sewer line of a suitable sewage discharge facility shall be made by a plumber licensed by the state.
- J. Whenever possible, the installation of a suitable sewage discharge facility shall connect to any structure, from which sewage is to be discharged, at an elevation below the first floor of the structure. In any structure in which sewage is to be discharged from an area which is too low to permit gravity flow of the sewage to the public sanitary sewer line, such sewage shall be lifted by an approved means to the connection made by the suitable sewage discharge facility with the structure.
- K. No suitable sewage discharge facility which is connected either directly or indirectly to a public sanitary sewer line shall be connected either directly or indirectly to any roof downspout, foundation drain, areaway drains or other sources of surface runoff or groundwater.
- L. The final approval of a suitable sewage discharge facility shall not become effective until the installation and connection to the public sanitary sewage line is completed to the satisfaction of the Borough. The owner or the applicant for the permit shall notify the Borough when the suitable sewage discharge facility is ready for connection to the public sanitary sewage line, which connection shall be made under the supervision of the Borough or its representative.

§ 353-50. Violations and penalties.

Any owner who has been notified in accordance with the provisions of this article and fails to comply with these provisions by failing to install and connect suitable sewage discharge facilities directly with the public sanitary sewer line or by constructing or maintaining any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage on any improved lot within the Borough, when the lot property line is within a two-hundred-foot radius of a public sanitary sewer line, shall be subject to a fine of \$100 for each day of noncompliance. Compliance shall be deemed to have been achieved upon inspection and approval by the Borough. Any owner or applicant for a permit who fails to comply with these provisions shall be subject to a fine of \$100 for each day of noncompliance. Compliance shall be deemed to have been achieved upon inspection and approval by the Borough.

Appendix

Chapter A361**CABLE TELEVISION FRANCHISE**

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 12-12-2007 by Ord. No. 28-2007; amended in its entirety 5-13-2021 by Ord. No. 11-2021. Amendments noted where applicable.]

§ A361-1. Purpose; renewal of consent.

The Borough hereby grants to Comcast renewal of its nonexclusive municipal consent to place in, upon, across, above, over and under highways, streets alleys, sidewalks, easements, public ways and public places in the Borough, poles, wires, cables, underground conduits, manholes and other television conductors, fixtures, apparatus, and equipment as may be necessary for the construction, operation and maintenance in the Borough of a cable television and communications system.

§ A361-2. Definitions.

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. Such meaning or definition of terms in supplemental to those definitions of the Federal Communications Commission ("FCC") rules and regulations, 47 CFR Subsection 76.1 et seq., and the Cable Communications Policy Act, 47 U.S.C. § 521 et seq., as amended, and the Cable Television Act, N.J.S.A. 48:5A-1 et seq., and shall in no way be construed to broaden, alter or conflict with the federal and state definitions:

ACT or CABLE TELEVISION ACT — Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1 et seq.

APPLICATION — The company's application for renewal of municipal consent.

BASIC CABLE SERVICE — Any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.

BOARD or BPU — The Board of Public Utilities, State of New Jersey.

BOROUGH or MUNICIPALITY — The Borough of Atlantic Highlands, County of Monmouth, State of New Jersey.

COMPANY or COMCAST — The grantee of rights under this chapter and is known as "Comcast of Monmouth, LLC."

FCC — The Federal Communications Commission.

OFFICE or OCTV — The Office of Cable Television of the Board.

PRIMARY SERVICE AREA or PSA — Consists of the area of the Borough currently served with existing plant as set forth in the map annexed to the company's application for municipal consent.

§ A361-3. Statement of findings.

A public hearing concerning the consent herein granted to the company was held after proper public notice pursuant to the terms and conditions of the Act. Said hearing having been held and fully open to the public, and the municipality having received all comments regarding the qualifications of the company to receive this consent, and the representations of the company that the company possesses the necessary legal, technical, character, financial and other qualifications and that the company's operating and construction

arrangements are adequate and feasible.

§ A361-4. Duration of franchise; noncompliance.

- A. The nonexclusive municipal consent granted herein shall expire 10 years from the date of expiration of the previous certificate of approval issued by the Board.
- B. In the event that the municipality shall find that the company has not substantially complied with the material terms and conditions of this chapter, the municipality shall have the right to petition the OCTV, pursuant to N.J.S.A. 48:5A-47, for appropriate action, including modification and/or termination of the certificate of approval; provided, however, that the municipality shall first have given the company written notice of all alleged instances or noncompliance and an opportunity to cure same within 90 days of that notification.

§ A361-5. Franchise fee.

Pursuant to the terms and conditions of the Act, N.J.S.A. 48:5A-30(d), the company shall, during each year of operation under the consent granted herein, pay to the municipality 3.5% of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the municipality or any higher amount permitted by the Act or otherwise allowable by law. The current franchise fee paid to the Borough is 3.5%.

§ A361-6. Franchise territory.

The consent granted under this chapter for the renewal of the franchise shall apply to the entirety of the Borough and any property subsequently annexed hereto.

§ A361-7. Extension of service.

The company shall be required to proffer service to any residence along any public right-of-way in the primary service area, as set forth in the company's application. Any extension of plant beyond the primary service area shall be governed by the company's line extension policy, as set forth in the company's application, with an HPM ("homes-per-mile") of 35 dwellings per linear mile from the nearest active trunk or feeder line from which a usable cable signal may be obtained. For purposes of this section and the company's implementation of the LEP, a home shall only be counted as a dwelling unit if such home is occupied and within 275 feet of the public right-of-way.

§ A361-8. Construction requirements.

- A. Restoration. In the event that the company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the natural topography, the company shall, at its sole expense, restore and replace such places or things so disturbed in as reasonably good a condition as existed prior to the commencement of said work.
- B. Relocation. If at any time during the period of this consent, the Borough shall alter or change the grade of any street, alley or other way or place, the company, upon reasonable notice by the Borough, shall remove, relay or relocate its equipment, at the expense of the company. In requiring the company to remove, relay or relocate any portion of its property, the Borough shall treat the company the same as, and require no more of, the company than, any other similarly situated entity utilizing the public rights-of-way, including with respect to reimbursement of costs.
- C. Removal or trimming of trees. During the exercise of its rights and privileges under this franchise,

the company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks or other public places of the Borough so as to prevent the branches of such trees from coming in contact with the wires and cable of the company. Such trimming shall be only to the extent necessary to maintain proper clearance of the company's wire and cables.

- D. Installation of equipment. The company shall install equipment in the same location and manner as existing public utilities, whenever possible, in order to minimize the impact of same on surrounding property.

§ A361-9. Customer service.

In providing services to its customers, the company shall comply with N.J.A.C. 14:18-1 et seq., and all applicable state and federal statutes and regulations. The company shall strive to meet or exceed all voluntary company and industry standards in the delivery of customer service.

- A. The company shall continue to comply fully with all applicable state and federal statutes and regulations regarding credit for outages, the reporting of same to regulatory agencies and notification of same to customers.
- B. The company shall continue to fully comply with all applicable state and federal statutes and regulations regarding the availability of devices for the hearing impaired and the notification of same to customers.

§ A361-10. Municipal Complaint Officer.

The Office of Cable Television is hereby designated as the Complaint Officer for the Borough pursuant to N.J.S.A. 48:5A-26(b). All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5. The Borough shall have the right to request copies of records and reports pertaining to complaints by Borough customers from the OCTV.

§ A361-11. Local office.

During the term of this franchise, and any renewal thereof, the company shall maintain a business office or agent in accordance with N.J.A.C. 14:18-5.1 for the purpose of receiving, investigating and resolving all local complaints regarding the quality of service, equipment malfunctions, and similar matters.

§ A361-12. Performance bond.

During the life of the franchise, the company shall give to the Borough a bond in the amount of \$25,000. Such bond shall be to insure the faithful performance of all undertakings of the company as represented in its application for municipal consent incorporated herein.

§ A361-13. Subscriber rates.

The rates of the company shall be subject to regulation as permitted by federal and state law.

§ A361-14. Commitments by the company.

The parties agree that Comcast will continue to provide basic cable service to Borough Hall, the Police Department, Recreation Department, Recycling Center and the Municipal Marina Office.

§ A361-15. Governmental access.

- A. The company will provide one channel for governmental access within one year of the issuance of a renewal certificate of approval by the BPU. It will be on the most basic tier of service offered by the company in accordance with the Cable Act, Section 611 (47 U.S.C. § 531), and as further set forth below.
- B. The company does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. Any PEG access user, whether an educational or government user, acquires no property or other interest by virtue of the use of a channel so designated and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use.
- C. The company shall not exercise editorial control over the use of any educational or governmental channel capacity, except the company may refuse to transmit any educational or governmental access program or portion of any public or governmental access program that contains obscenity, indecency, or nudity.
- D. Government access. "Government access" shall mean noncommercial use by the governing bodies of the Borough for the purpose of showing the public local government at work.
- E. Fallow time. Because blank or underutilized PG channels are not in the public interest, in the event the Borough or other EG access users elect not to fully program the PG access channel, the company may program unused time on those channels subject to reclamation by the Borough upon no less than 60 days' written notice.
- F. Indemnification. The Borough shall indemnify the company for any liability, loss, or damage it may suffer due to violation of the intellectual property rights of third parties on the EG channel and from claims arising out of the rules for or administration of PEG access channel and its programming.
- G. Within one year of the issuance of a renewal certificate of approval by the BPU, the company shall provide to the Borough a one-time PEG access capital grant in the amount of \$5,000 to meet the PEG access capital needs of the community.
- H. The Communications Act of 1934, as amended [47 U.S.C. § 543(b)], allows the company to itemize and/or identify: 1.) the amount on the subscriber bill assessed as a franchise fee and the identity of the governmental authority to which the fee is paid; 2.) the amount on the bill assessed to satisfy any requirements imposed on the company by the cable franchise to support public, education, and/or governmental access channels or the use of such channels; and 3.) any grants or other fees on the bill or any tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. The company reserves its external cost, pass-through rights to the full extent permitted by law.

§ A361-16. Emergency uses.

- A. The company will comply with the Emergency Alert System ("EAS") rules in accordance with applicable state and federal statutes and regulations.
- B. The company shall in no way be held liable for any injury suffered by the Borough or any other person, during an emergency, if for any reason the Borough is unable to make full use of the cable television system as contemplated herein.

§ A361-17. Liability insurance.

The company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of \$1,000,000 covering liability for any death, personal injury, property damages or other liability arising out of its construction and operation of the cable television system, and an excess liability (or "umbrella") policy in the amount of \$5,000,000.

§ A361-18. Incorporation of application.

All of the statements and commitments contained in the application or annexed thereto and incorporated therein, and any amendment thereto, except as modified herein, are binding upon the company as terms and conditions of this consent. The application and other relevant writings submitted by the company shall be annexed hereto and made a part hereof by reference, provided same do not conflict with application of state or federal law.

§ A361-19. Competitive equity.

Should the Borough grant municipal consent for a franchise to construct, operate and maintain a cable television system to any other person, corporation or entity on terms materially less burdensome or more favorable than the terms contained herein, the company may substitute such language that is more favorable or less burdensome for the comparable provision of this chapter subject to the provisions of N.J.A.C. 14:17-6.7.

§ A361-20. Severability.

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and its validity or unconstitutionality shall not affect the validity of the remaining portions of the chapter.

§ A361-21. Proprietary information.

The company shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Borough agrees to treat any information disclosed by the company as confidential and only to disclose it to those employees, representatives, and agents of the Borough that have a need to know in order to enforce this chapter agreement and who agree to maintain the confidentiality of all such information. The company shall not be required to provide customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this section, the terms "proprietary" or "confidential" include, but are not limited to, information relating to the cable system design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the company to be competitively sensitive. The company may make proprietary or confidential information available for inspection but not copying or removal by the municipality's representative. In the event that the municipality has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information the company has designated as confidential, trade secret or proprietary, the Borough shall notify the company of such request and cooperate with the company in opposing such request.

§ A361-22. Force majeure.

The company shall not be liable or responsible for, in whole or in part, any delay or failure to perform

any of its obligations hereunder which may result from accidents, pandemics, floods, fires, earthquakes, tornadoes or other acts of God; war, acts of war (whether or not a declaration of war is made), civil disobedience; civil disturbance, sabotage or vandalism, customer tampering or interference, or act of public enemy; strikes, other labor or job actions or unavailability of materials or equipment; or other events or circumstances beyond the reasonable control of the company.

§ A361-23. Third-party beneficiaries.

Nothing in this franchise or in any prior agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or franchise.

§ A361-24. When effective.

This chapter shall take effect immediately upon issuance of a renewal certificate of approval from the BPU.

Derivation Table

Chapter DT**DERIVATION TABLE**

In order to assist Code users in the transition to the new Code's organization, the Derivation Table indicates where chapters and articles of the 1966 Code have been included in the 2010 Code, or the reason for exclusion.

§ DT-1. Derivation Table of 1966 Code to 2010 Code

NCM	=	Not Code material (legislation is not general or permanent in nature).
REP	=	Repealed effective with adoption of Code; see Ch. 1, Art. I.
NI	=	Not included in Code but saved from repeal.
NLP	=	New legislation is pending.

Chapter/Title From 1966 Code	Location in 2010 Code
Ch. 4, Alcoholic Beverages	
Art. I, Sale and License Fees	Ch. 85, Art. I
Art. II, Possession, Service or Consumption by Minors	REP
Art. III, Registration of Licensees and Employees of Licensees	Ch. 85, Art. II
Ch. 6, Amusement Devices and Vending Machines	
Art. I, Automatic Amusement Games	REP
Art. II, Music and Cigarette Machines	REP
Art. III, Viewing or Binocular Machines	REP
Ch. 16, Beaches	REP
Ch. 19, Bills, Payment of	
Art. I, Delinquent Taxes, Charges and Bills	Ch. 323, Art. I
Ch. 25, Brush, Weeds and Hedges	
Art. I, Brush, Plant Life, Etc., Abutting Roadways	Ch. 265, Art. I
Art. II, Removal of Brush and Other Debris from Lands	Ch. 265, Art. II
Ch. 27, Buildings - Occupancy Regulations	
Art. I, Buildings Unfit for Human Habitation	Ch. 200, Art. I
Art. II, Building Registration and Regulations	Ch. 272
Art. III, Certificates of Occupancy	Ch. 128
Ch. 30, Business Administrator	Superseded by Ord. No. 19-2005
Ch. 36, Construction Codes, Uniform	Ch. 136
Ch. 42, Dogs	Superseded by Ord. No. 15-2008

Chapter/Title From 1966 Code	Location in 2010 Code
Ch. 46, Excavations	Ch. 163, Art. I
Ch. 50, Firemen, Auxiliary	Ch. 28
Ch. 51, Fire Department	Ch. 24
Ch. 53, Fire Prevention	Repealed by Ord. No. 2-91
Ch. 54, Games of Chance	
Art. I, Bingo	Ch. 189, Art. I
Art. II, Raffles	Ch. 189, Art. II
Ch. 55, Garbage and Refuse (Board of Health)	
Art. I, General Regulations	Ch. 300, Art. I
Art. II, Recycling of Used Newspapers	REP
Ch. 57, Harbor Commission	Ch. 5, Art. I
Ch. 58, Harbor Use	
Art. I, Rules and Regulations	Ch. 196, Art. I
Art. II, Berthing Rates	Removed from 1966 Code at request of Borough
Ch. 59, Housing Code	Ch. 200
Ch. 64, Hunting	REP
Ch. 65, Insurance	
Art. I, Fire Insurance Claims	Ch. 173
Ch. 69, Land Use Procedures	Repealed by Ord. No. 35-93
Ch. 72, Licensed Occupations	
Art. I, Occupation Licenses	REP
Art. II, Signs and Advertisements	Ch. 211, Art. I
Ch. 74, Littering	Ch. 216, Art. I
Ch. 75, Loitering	REP
Ch. 79, Municipal Court	Ch. 15
Ch. 87, Parks and Public Lands	
Art. I, Parks	Ch. 249
Ch. 88, Peddlers, Solicitors and Canvassers	Ch. 254
Ch. 94, Police Department	Repealed by Ord. No. 5-97
Ch. 98, Public Health Nuisance Code (Board of Health)	Ch. 235
Ch. 100, Rent Control	Ch. 277
Ch. 102, Salaries	NI
Ch. 107, Sewerage Authority	REP

Chapter/Title From 1966 Code	Location in 2010 Code
Ch. 109, Shade Tree Commission	Repealed by Ord. No. 21-95
Ch. 112, Snow and Ice	Ch. 317, Art. I
Ch. 114, Soil Removal	Repealed by Ord. No. 35-93
Ch. 118, Streets and Sidewalks	
Art. I, Construction of Sidewalks	REP
Art. II, Obstruction of Streets and Sidewalks	REP
Art. III, Poles in Streets and Sidewalks	REP
Ch. 120, Subdivision of Land	Repealed by Ord. No. 35-93
Ch. 124, Swimming Pools	Repealed by Ord. No. 35-93
Ch. 127, Tax Exemption - Tangible Household and Personal Property	REP
Ch. 130, Taxicabs	Ch. 327
Ch. 133, Trailers	REP
Ch. 139, Vehicles and Traffic	Ch. 139
Ch. 142, Water and Sewer Rents and Uses	Ch. 353
Ch. 146, Zoning	Repealed by Ord. No. 35-93

APPENDIX

Part 1, Police Rules and Regulations	REP
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Disposition List

Chapter DL**DISPOSITION LIST**

The following is a chronological listing of legislation of the Borough of Atlantic Highlands adopted since the publication of the Code, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] The last legislation reviewed for the original publication of the Code was Ord. No. 18-2010, adopted 7-28-2010.

§ DL-1. Disposition of legislation.

Ordinance No.	Adoption Date	Subject	Disposition
19-2010	10-13-2010	Games of chance: issuance of licenses	Ch. 189, Art. III
20-2010	12-8-2010	Water and sewer amendment	Ch. 353
01-2011	1-26-2011	Salaries	NCM
02-2011	1-26-2011	Borough Attorney	Ch. 44, Art. X
03-2011	2-23-2011	Adoption of Code	Ch. 1, Art. I
04-2011	2-23-2011	Bond	NCM
05-2011	3-9-2011	Conveyance of land	NCM
06-2011	4-13-2011	Exceed budget; cap bank	NCM
07-2011		Suspension of open space tax	Not adopted
08-2011	6-8-2011	Appropriation	NCM
09-2011	6-8-2011	Appropriation	NCM
10-2011	7-27-2011	Development regulations amendment	Ch. 150
11-2011	7-27-2011	Fee schedule amendment; licensing: bed-and-breakfast establishments	Ch. 168, Art. II; Ch. 211, Art. II
12-2011	7-27-2011	Lease of capital equipment	NCM
13-2011	7-27-2011	Bond	NCM
14-2011	7-27-2011	Qualified Purchasing Agent	Ch. 60, Art. I
15-2011	8-17-2011	Salaries	NCM
16-2011	9-14-2011	Vehicles and traffic amendment	Ch. 139
17-2011	10-12-2011	Fee schedule amendment (water rates)	Ch. 168, Art. II
18-2011	10-12-2011	Appropriation	NCM
19-2011	11-9-2011	Conveyance of property	NCM
20-2011	12-21-2011	Salaries	NCM

Ordinance No.	Adoption Date	Subject	Disposition
01-2012	1-25-2012	Salaries; nomenclature changes (Harbor Manager; Client Services Representative)	Ch. 5; Ch. 44, Art. VIII; Ch. 63; Ch. 196; Ch. 249
02-2012	2-8-2012	Appropriation	NCM
03-2012	4-18-2012	Exceed budget; cap bank	NCM
04-2012	4-18-2012	Rent control amendment	Superseded by Ord. No. 06-2016
05-2012	5-23-2012	Salaries	NCM
06-2012	5-23-2012	Appropriation	NCM
07-2012	6-27-2012	Bond	NCM
08-2012	7-25-2012	Vehicles and traffic amendment	Ch. 139
09-2012	9-12-2012	Purchasing Manual	Repealed by Ord. No. 21-2021
10-2012	9-26-2012	Conveyance of easement	NCM
11-2012	10-10-2012	Fee schedule amendment; mercantile licenses; rental property registration amendment	Ch. 168, Art. II; Ch. 211, Art. I; Ch. 272
12-2012	10-24-2012	Vehicles and traffic amendment	Ch. 139
13-2012	10-24-2012	Development regulations amendment	Ch. 150
01-2013	1-23-2013	Salaries	NCM
02-2013	2-13-2013	Fee schedule amendment	Ch. 168, Art. II
03-2013	2-13-2013	Bond	NCM
04-2013	3-27-2013	Flood damage prevention amendment	Repealed by Ord. No. 07-2022
05-2013	2-27-2013	Bond	NCM
06-2013	4-24-2013	Appropriation	NCM
07-2013	4-24-2013	Development regulations amendment	Ch. 150
08-2013	4-24-2013	Bond	NCM
09-2013	5-8-2013	Exceed budget; cap bank	NCM
10-2013	6-12-2013	Development regulations amendment	Ch. 150
11-2013	7-24-2013	Harbor use: mooring or anchoring	Ch. 196, Art. V
12-2013	7-24-2013	Bond	NCM
13-2013	9-25-2013	Appropriation	NCM
14-2013			Not adopted

Ordinance No.	Adoption Date	Subject	Disposition
15-2013			Not adopted
01-2014	1-22-2014	Salaries	NCM
02-2014	2-12-2014	Dissolution of Sewerage Authority	Ch. 353, footnote only
03-2014	2-12-2014	Bond	NCM
04-2014	3-26-2014	Creation of position of Assistant Superintendent of Sewer	NCM
05-2014	4-26-2014	Transfer of property	NCM
06-2014	5-14-2014	Exceed budget; cap bank	NCM
07-2014	5-14-2014	Development regulations amendment; fee schedule amendment	Ch. 150; Ch. 168, Art. II
08-2014	5-28-2014	Salaries	NCM
09-2014	8-20-2014	Annexation of property	NCM
01-2015			
02-2015	4-8-2015	Exceed budget; cap bank	NCM
03-2015	4-22-2015	Camping: Lenape Woods	Ch. 120, Art. I
04-2015	9-9-2015	Acquisition of property	NCM
05-2015	9-9-2015	Excavations amendment	Ch. 163
06-2015	10-28-2015	Development regulations amendment	Ch. 150
07-2015			
08-2015	11-10-2015	Fees: fee schedule amendment	Ch. 168, Art. II
09-2015	12-2-2015	Zoning Map amendment	NCM
10-2015	12-16-2015	Rent control amendment	Superseded by Ord. No. 06-2016
01-2016	1-27-2016	Salaries	NCM
02-2016	2-24-2016	Bond	NCM
03-2016	2-24-2016	Bond	NCM
04-2016	4-27-2016	Exceed Budget; Cap Bank	NCM
05-2016			Not adopted
06-2016	6-22-2016	Rent Control	Ch. 277
07-2016	7-27-2016	Bond	NCM
08-2016	7-27-2016	Vehicles and Traffic amendment	Ch. 139
09-2016	8-17-2016	Purchasing: Payment of Claims	Ch. 60, Art. III
10-2016	12-21-2016	Vehicles and Traffic amendment	Ch. 139

Ordinance No.	Adoption Date	Subject	Disposition
11-2016			Not adopted
12-2016	12-21-2016	Department of Public Works	Ch. 59
01-2017	1-25-2017	Salaries	NCM
02-2017	1-25-2017	Appropriation	NCM
03-2017			Not adopted
04-2017	3-22-2017	Exceed Budget; Cap Bank	NCM
05-2017			Tabled
06-2017	5-24-2017	Animals: Dogs, Cats and Other Animals amendment	Ch. 97, Art. III
07-2017			Tabled
08-2017	9-27-2017	Taxation: Tax Exemption for Improvements and New Construction amendment	Ch. 323, Art. II
09-2017	9-27-2017	Vehicles and Traffic amendment	Ch. 139
01-2018	1-24-2018	Salaries	NCM
02-2018			Withdrawn
03-2018	3-14-2018	Flood Damage Prevention Amendment	Repealed by Ord. No. 07-2022
04-2018	4-25-2018	Exceed Budget; Cap Bank	NCM
05-2018	4-11-2018	Street Vacation	NCM
06-2018	5-23-2018	Street Vacation	NCM
07-2018	6-27-2018	Development Regulations Amendment	Ch. 150
08-2018	7-11-2018	Property Maintenance: Invasive Plants Prohibited; Containment and Removal	Ch. 265, Art. III
09-2018	7-25-2018	Development Regulations Amendment	Ch. 150
10-2018	9-12-2018	Excavations Amendment	Ch. 163
11-2018	9-12-2018	Vehicles and Traffic Amendment	Ch. 139
12-2018	10-10-2018	Development Regulations Amendment	Ch. 150
13-2018	9-26-2018	Police Department: Police Chaplain	Ch. 50, Art. II
14-2018			Not adopted
15-2018	9-26-2018	Development Regulations Amendment	Ch. 150

Ordinance No.	Adoption Date	Subject	Disposition
16-2018	9-26-2018	Development Regulations Amendment	Ch. 150
17-2018	9-26-2018	Development Regulations Amendment	Ch. 150
18-2018	9-26-2018	Development Regulations Amendment	Ch. 150
19-2018	10-10-2018	Business Hours of Operation	Ch. 110
20-2018	11-28-2018	Development Regulations Amendment	Ch. 150
21-2018	12-19-2018	Bond	NCM
01-2019	1-1-2019	Salaries	NCM
02-2019	3-27-2019	Vehicles and Traffic Amendment	Ch. 139
03-2019	4-10-2019	Streets and Sidewalks Amendment	Ch. 317
04-2019	4-10-2019	Vehicles and Traffic Amendment	Ch. 139
05-2019	4-10-2019	Exceed Budget; Cap Bank	NCM
06-2019	4-22-2019	Acceptance of Donation	NCM
07-2019	5-22-2019	Development Regulations Amendment	Ch. 150
08-2019	7-10-2019	Plastic Bags and Straws, Single-Use	Repealed by Ord. No. 06-2022
09-2019	7-10-2019	Balloons, Intentional Release of	Ch. 106
10-2019	7-24-2019	Development Regulations Amendment	Repealed by Ord. No. 19-2021

Ord. No.	Adoption Date	Subject	Disposition	Supp. No.
11-2019	9-11-2019	Donation of Property	NCM	10
12-2019	9-25-2019	Bond	NCM	10
13-2019	9-25-2019	Sale of Property	NCM	10
14-2019	9-25-2019	Street Vacation	NCM	10
15-2019	10-23-2019	Development Regulations Amendment	Ch. 150	10
16-2019	11-18-2019	Development Regulations Amendment	Ch. 150	10
17-2019			Withdrawn	10
18-2019			Withdrawn	10
19-2019	12-18-2019	Water and Sewer Amendment	Ch. 353	10

Ord. No.	Adoption Date	Subject	Disposition	Supp. No.
20-2019	12-18-2019	Murals, Public	Ch. 229	10
21-2019	12-18-2019	Boards, Committees and Commissions: Design Review Committee	Ch. 5, Art. VI	10
01-2020	1-23-2020	Salaries	NCM	10
02-2020	2-13-2020	Bond	NCM	10
03-2020	3-26-2020	Vehicles and Traffic Amendment	Ch. 139	10
04-2020	4-23-2020	Exceed Budget; Cap Bank	NCM	10
05-2020			Not Adopted	11
06-2020			Not Adopted	11
07-2020			Not Adopted	11
08-2020	12-17-2020	Vehicles and Traffic Amendment	Ch. 139	11
09-2020			Not Adopted	11
10-2020	12-17-2020	Transfer of Property	NCM	11
01-2021	1-28-2021	Salaries	NCM	11
02-2021	2-11-2021	Stormwater Control Amendment	Ch. 311	11
03-2021	1-28-2021	Trees Amendment	Ch. 340	11
04-2021			Not Adopted	11
05-2021	2-11-2021	Exceed Budget; Cap Bank	NCM	11
06-2021			Not Adopted	11
07-2021	4-22-2021	Development Regulations Amendment	Ch. 150	11
08-2021	4-22-2021	Appropriation	NCM	11
09-2021	5-13-2021	Fire Prevention: Fire Prevention and Hazardous Substances Amendment	Ch. 178, Art. I	11
10-2021	5-13-2021	Fees: Fee Schedule Amendment	Ch. 168, Art. II	11
11-2021	5-13-2021	Cable Television Franchise Amendment	Ch. A361	11
12-2021	5-27-2021	Bond	NCM	11
13-2021			Not Adopted	11
14-2021	6-10-2021	Designation	NCM	11
15-2021	6-10-2021	Appropriation	NCM	11
16-2021	7-22-2021	Appropriation	NCM	11

Ord. No.	Adoption Date	Subject	Disposition	Supp. No.
17-2021	8-12-2021	Officers and Employees: Business Administrator Amendment	Ch. 44, Art. VI	11
18-2021	8-12-2021	Development Regulations Amendment	Ch. 150	11
19-2021	8-12-2021	Development Regulations Amendment	Ch. 150	11
20-2021	9-9-2021	Purchasing: Qualified Purchasing Agent Amendment	Ch. 60, Art. I	11
21-2021	9-9-2021	Purchasing: Purchasing Policy and Procedures Repealer	Ch. 60, Art. II (reference only)	11
22-2021	9-23-2021	Third-Party Payroll Disbursement	Ch. 61	11
23-2021	9-23-2021	Purchase of Property	NCM	11
01-2022	1-13-2022	Salaries	NCM	12
02-2022	1-13-2022	Exceed Budget; Cap Bank	NCM	12
03-2022	3-10-2022	Vehicles and Traffic Amendment	Ch. 139	12
04-2022	5-12-2022	Salaries	NCM	12
05-2022	5-12-2022	Commemorative Street Sign	NCM	12
06-2022	5-12-2022	Plastic Bags and Straws, Single-Use, Repealer	Ch. 260, Reference Only	12
07-2022	6-9-2022	Flood Damage Prevention	Ch. 183	12
08-2022	6-9-2022	Bond	NCM	12
09-2022			Withdrawn	12
10-2022	8-11-2022	Boards, Committees and Commissions: Atlantic Highlands Veterans Affairs Committee	Ch. 5, Art. VII	12
11-2022	9-22-2022	Peddling and Soliciting Amendment	Ch. 254	12
12-2022	10-13-2022	Salaries	NCM	12
13-2022			Withdrawn	12
14-2022	12-15-2022	Trees Amendment	Ch. 340	12
01-2023	1-12-2023	Salaries	NCM	12
02-2023	1-12-2023	Exceed Budget; Cap Bank	NCM	12
03-2023	2-9-2023	Length of Service Awards Program Amendment	Ch. 34	13
04-2023	8-10-2023	Exterior Lighting Standards	Ch. 165	13

Ord. No.	Adoption Date	Subject	Disposition	Supp. No.
05-2023	3-9-2023	Littering: Litter Control Amendment	Ch. 216, Art. II	13
06-2023	5-25-2023	Fees	NCM	13
07-2023	4-26-2023	Background Checks: Fingerprinting and Background Checks for Youth Activities	Ch. 103, Art. II	13
08-2023	6-8-2023	Vehicles and Traffic Amendment	Ch. 139	13
09-2023	6-8-2023	Fees: Fee Schedule Amendment	Ch. 168, Art. II	13
10-2023	8-10-2023	Vehicles and Traffic Amendment	Ch. 139	13
11-2023	9-14-2023	Fees: Fee Schedule Amendment	Ch. 168, Art. II	13
12-2023	9-14-2023	Vehicles and Traffic Amendment	Ch. 139	13
13-2023	9-14-2023	Appropriation	NCM	13
14-2023	10-12-2023	Renaming of Park	NCM	14
15-2023			Tabled	
01-2024	2-22-2024	Salaries	NCM	14
02-2024	1-25-2024	Vehicles and Traffic Amendment	Ch. 139	14
03-2024	2-22-2024	Development Regulations Amendment	Ch. 150	14
04-2024	1-25-2024	Animals: Dogs, Cats and Other Animals Amendment; Fees: Fee Schedule Amendment	Ch. 97, Art. III; Ch. 168, Art. II	14
05-2024	2-9-2024	Rent Control Amendment	Ch. 277	14
06-2024	2-22-2024	Bond	NCM	14
07-2024	3-14-2024	Development Plan Checklist	NCM	14
08-2024	3-28-2024	Vehicles and Traffic Amendment	Ch. 139	14
09-2024	4-25-2024	Exceed Budget; Cap Bank	NCM	14
10-2024	5-9-2024	Certificates of Occupancy and Inspections: Certificate of Occupancy Amendment; Certificate of Inspection Amendment; Lead-Safe Certification; Certificate of Registration of Insurance; Fees: Fee Schedule Amendment	Ch. 128, Art. I; Ch. 128, Art. II; Ch. 128, Art. III; Ch. 128, Art. IV; Ch. 168, Art. II	14
11-2024	6-13-2024	Stormwater Control Amendment	Ch. 311	14
12-2024	5-23-2024	Salt Storage, Privately Owned	Ch. 281	14
13-2024	8-8-2024	Vehicles and Traffic Amendment	Ch. 139	14

Ord. No.	Adoption Date	Subject	Disposition	Supp. No.
14-2024	7-11-2024	Bond	NCM	14
15-2024	7-11-2024	Background Checks: Background Checks and Safety Training for Youth Activities Amendment	Ch. 103, Art. II	14
16-2024	7-11-2024	Tax Levy Referendum	NCM	14
17-2024	8-8-2024	Rent Control Amendment	Ch. 277	14

Development Regulations Volume

Chapter 150

DEVELOPMENT REGULATIONS

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 11-3-1993 by Ord. No. 35-93; amended 4-12-1995 pursuant to Ord. No. 5-95.¹⁶⁶ Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Uniform construction codes — See Ch. 136.

Sewer use — See Ch. 285.

Fire prevention — See Ch. 178.

Stormwater control — See Ch. 306.

Flood damage prevention — See Ch. 183.

Stormwater management — See Ch. 311.

Housing standards — See Ch. 200.

166. Editor's Note: Ordinance No. 5-95 provided for the abolishment of the Zoning Board of Adjustment. Pursuant thereto, various sections of this chapter have been revised to delete the reference to the Board of Adjustment or change those references to the Planning Board where appropriate.

ARTICLE I
Title and Purpose

§ 150-1. Short title.

This chapter shall be known and may be cited as the "Development Regulations of the Borough of Atlantic Highlands" and may be so pleaded and cited.

§ 150-2. Purpose.

The purpose of this chapter is to exercise the authority delegated to municipalities under N.J.S.A. 40:55D-1 et seq. to regulate development and to promote good planning practice. The chapter's intent is:

- A. To guide the appropriate use or development of all lands in the Borough, in a manner which will promote the public health, safety, morals, and general welfare;
- B. To secure safety from fire, flood, panic and other natural and man-made disasters;
- C. To provide adequate light, air and open space;
- D. To ensure that the development of the Borough does not conflict with the development and general welfare of neighboring municipalities, the county and the state as a whole;
- E. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;
- F. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use polices;
- G. To provide sufficient space in appropriate locations for a variety of residential, recreational, commercial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;
- H. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight;
- I. To promote a desirable visual environment through creative development techniques and good civic design and arrangements;
- J. To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources and to prevent urban sprawl and degradation of the environment through improper use of land;
- K. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;
- L. To promote utilization of renewable energy sources;
- M. To promote the maximum practicable recovery and recycling of recyclable materials from municipal solid waste;
- N. To encourage the development of senior citizen housing;

- O. To protect steep slope areas with particular attention to slump block areas; and
- P. To promote the beneficial development and use of the Atlantic Highlands Harbor.

ARTICLE II

Definitions

§ 150-3. Purpose.

Unless otherwise expressly stated, the following terms shall, for the purposes of this chapter, have the meanings herein indicated.

§ 150-4. Other applicable definitions.

Wherever a term is defined in N.J.S.A. 40:55D-4 et seq., the Municipal Land Use Law, and/or in N.J.S.A. 52:27D-119 et seq., the Uniform Construction Code, and used in this article, such term is intended to include and have the meaning set forth in the definition of such term found in said statute and code in addition to the definition for such term which may be included in this article, unless the context clearly indicates a different meaning.

§ 150-5. Intent of certain terms and words.

For the purpose of this chapter, certain terms or words used herein shall be interpreted or defined as follows:

- A. Words used in the present tense include the future; the singular number includes the plural and the plural, the singular; the word "zone" includes the word "district," the word "occupied" includes the word "designed" and the phrase "intended to be occupied"; the word "shall" is mandatory and not directory; the word "may" indicates a permissive action; the word "abut" shall include the words "directly across from," "adjacent" and "next to"; and the word "used" shall include "arranged," "designed," "constructed," "altered," "converted," "rented," "leased" or "intended to be used"; the term "such as," where used herein, shall be considered as introducing typical or illustrative, rather than an entirely exclusive or inclusive designation of, permitted or prohibited uses, activities, establishments or structures.
- B. Words or word groups which are not defined below shall have the meanings set forth in the Municipal Land Use Law¹⁶⁷ or the Uniform Construction Code¹⁶⁸ or as given in Webster's Unabridged Dictionary.

§ 150-6. Definitions.

Certain words, phrases, and terms in this chapter are defined for the purpose herein as follows:

ACCESSORY BUILDING, STRUCTURE OR USE — A subordinate building, structure or use, the purpose of which is incidental to that of a main building, structure or use on the same lot.

ADMINISTRATIVE OFFICER — For matters before the Borough Council, the Municipal Clerk. For all matters pursuant to § 150-9B, C(3), E(4) and (5), pertaining to minutes and other administrative matters, the Administrative Officer shall be the Secretary of the Planning Board. In matters involving § 150-9D(11), pertaining to issuance of the official list of adjacent property owners for required notices, the Administrative Officer shall be the Municipal Clerk. In matters involving § 150-11, pertaining to records maintenance, the Administrative Officer shall be the Secretary of the Planning Board in matters involving the Planning Board and the Zoning Officer in matters involving the issuance of a development permit

¹⁶⁷.Editor's Note: See N.J.S.A. 40:55D-1 et seq.

¹⁶⁸.Editor's Note: See N.J.S.A. 52:27D-119 et seq.

or action taken pursuant to complaints regarding the enforcement of this chapter. In matters pertaining to appeals under the steep slope ordinance (§ 150-78), the Administrative Officer shall be the Borough Engineer. In matters involving §§ 150-10A, 150-12, 150-67, 150-68 and 150-10, pertaining to issuance of a permit or enforcement of this chapter, the Administrative Officer shall be the Zoning Officer. In matters pertaining to the issuance of a certificate of default approval pursuant to § 150-28 or the issuance of a certificate of nonconformance pursuant to § 150-10D(3), the Administrative Officer shall be the Borough Administrator. In matters pertaining to the review and certification of an application for completeness pursuant to § 150-23, the Administrative Officer shall be the person or committee authorized by the rules of the Planning Board. If for any other matters not otherwise indicated by ordinance, the Administrative Officer shall be the Borough Administrator or his/her designee. **[Amended 4-12-2000 by Ord. No. 2-00]**

ADT (AVERAGE DAILY TRAFFIC) — The average number of cars per day that pass over a given point.

ADULT BOOKSTORE — An establishment devoted to sale, rental, or distribution of pornographic books, magazines, pamphlets, photographs, motion pictures, phonograph records and video and audio tapes devoted to the presentation and exploitation of illicit sex, lust, passion, depravity, violence, brutality, nudity, immorality, and other obscene subjects, etc., used in connection with the aforementioned purposes.

ADVISORY BASE FLOOD ELEVATION — The base flood elevations for the one-percent storm as shown on the FEMA Advisory Base Flood Elevation (ABFE) Map, dated December 12, 2012. **[Added 4-24-2013 by Ord. No. 07-2013]**

AGGRESSIVE SOILS — Soils which may be corrosive to cast-iron and ductile-iron pipe. These soils represent approximately 5% of the soils found within the United States and include dump areas, swamps, marshes, alkaline soils, cinder beds, polluted river bottoms, etc., which are considered to be potentially corrosive.

AISLE — The traveled way by which cars enter and depart parking spaces.

ALLEY — A public or private street primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on some other street.

ALTERATIONS — As applied to a building or structure, means a change or rearrangement in the structural supports; or a change in the exterior appearance; or a change in height, width or depth; or moving a building or structure from one location or position to another; or changing, adding to or removing from or otherwise affecting the exterior appearance of a building or structure.

ALTERNATIVE TOWER STRUCTURE — Clock towers, bell steeples, light poles, flagpoles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers. **[Added 10-26-2005 by Ord. No. 17-2005]**

AMUSEMENT ARCADE — Any place of business containing more than three amusement devices.

AMUSEMENT DEVICE — Any machine, contrivance, or device, which, upon the insertion of a coin, slug, token, plate, disc or key into a slot, crevice, or other openings, or by the payment of any price, is operated or may be operated by the public generally for use as a game, entertainment, or amusement, whether or not registering a score, and shall include, but not be limited to, such devices as "Pac-Man" or other types of electronically operated game devices, skill ball, mechanical games operations or transactions similar thereto, by whatever name they may be called and shall not include pool or billiard tables.

ANTENNA — Any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals. (A conventional apparatus other than an earth or ground terminal used for the reception of television, radio and amateur radio communications.) **[Amended 10-26-2005 by Ord. No. 17-2005]**

APARTMENT — Dwelling unit in a multifamily building.

APPLICANT — A developer submitting an application for development or for a permit required in accordance with this chapter.

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

APPROVING AUTHORITY — "Approving authority" shall mean the Borough of Atlantic Highlands Planning Board with respect to conditional use permits and variance requests pursuant to N.J.S.A. 40:55D-70c, and to variance requests pursuant to N.J.S.A. 40:55D-70d(1), (3) or (6), or the Zoning Officer for permitted uses. **[Amended 10-26-2005 by Ord. No. 17-2005]**

ASCE — American Society of Civil Engineers.

ASTM — American Society for Testing Materials.

ATTIC, HABITABLE — An attic which has an approved stairway as a means of access and egress and in which the ceiling area at a minimum height of 7 1/3 feet above the attic floor is not more than one-third the area of the next floor below.

AUCTION MARKET — Any premises on which are held at periodic times auction sales of merchandise or any other personal property.

AUTOMOBILE REPAIR SHOP — The same as "motor vehicle repair garage."

AUTOMOBILE SALES AGENCY — A place of business where the primary purpose is the sale of new motor vehicles, having a building with either showrooms, office space, repair and/or maintenance facilities with or without outside sales on the same business premises or immediately adjacent thereto.

AUTOMOBILE SERVICE STATION — The same as "motor vehicle service station."

AUTOMOTIVE REPAIR GARAGE — The same as "motor vehicle repair garage."

AWNING — Any cover extending beyond a building for the purpose of shading or shielding walkways or entranceways which, however, shall not extend more than five feet horizontally from a building facade and shall in no case extend within two feet of a vehicular right-of-way, and which shall be mounted not less than eight feet nor more than 12 feet above a pedestrian level, consisting of either a flexible or nonflexible material.

AWWA — American Water Works Association.

BACKHAUL NETWORK — The lines that connect a provider's tower/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network. **[Added 10-26-2005 by Ord. No. 17-2005]**

BARRIER CURB — A vertical steep-faced curb intended to prevent encroachments by encouraging vehicles to stay within the cartway width.

BASEMENT — A story partly underground that is not a cellar. **[Amended 4-22-2021 by Ord. No. 07-2021]**

BED-AND-BREAKFAST ESTABLISHMENT — A dwelling unit or part thereof, in which overnight accommodations and a forenoon meal are provided to transients for compensation. Such establishments shall also meet the definition and standards established by any applicable federal, state or local building, fire, health or safety code. They shall not include establishments providing long-term accommodations, that are classified as a "R-3 Bed-and-Breakfast Home Stay," rooming house or boardinghouse as defined by N.J.S.A. 55:138-3. **[Added 7-27-2011 by Ord. No. 10-2011]**

BEDROOM — A room or portion of a structure with the principal function of serving as sleeping quarters.

BELGIAN BLOCK CURB — A type of paving stone generally cut in a truncated, pyramidal shape, laid with the base of the pyramid down.

BERM — A mound of soil, either natural or man-made, used as a view obstruction.

BICYCLE — A nonmotorized vehicle with two wheels tandem and pedals by which it is propelled.

BICYCLE-COMPATIBLE ROADWAY — A road designed to accommodate the shared use of the roadway by bicycles and motor vehicles.

BICYCLE LANE — A lane at the edge of a roadway reserved and marked for the exclusive use of bicycles.

BICYCLE PATH — A pathway usually separated from the roadway, designed specifically to satisfy the physical requirements of bicycling.

BICYCLIST — One who rides a bicycle.

BIKEWAY — A pathway designed to be used by bicyclists.

BILLBOARD — A structure utilized for advertising an establishment, an activity, a product, a service or entertainment, which is sold, produced, manufactured, available or furnished at a place other than on the property on which the said sign is located.

BLOCK — The length of a street between two street intersections.

BLOW-OFFS — An outlet in a pipe through which water or sediment can be discharged.

BOARD OF ADJUSTMENT — The Planning Board. (Note: The Zoning Board, previously established pursuant to N.J.S.A. 40:55D-69, was abolished pursuant to N.J.S.A. 40:55D-25(c) and Ordinance No. 5-95. All powers and authority of the Board of Adjustment are assigned to the Planning Board.

BOARDING OR LODGING HOUSE — Any dwelling for hire in which more than two persons are housed or lodged, with or without meals. This definition notwithstanding, a certificate of occupancy is required for any dwelling for hire.

BOATYARD — Any waterfront facility where docking accommodation and/or land-dry-storage accommodations for any watercraft, such as power boats, sailboats or row boats, are offered on a rental basis and where facilities for the building, rebuilding and general repair of boats and marine equipment are provided. A boatyard shall be deemed to include all auxiliary and accessory services such as chandlery, gasoline sales and rental business activities related to the primary use.

BUFFER — An area within a property or site, generally adjacent to and parallel with the property line, either consisting of natural existing vegetation or created by the use of trees, shrubs, fences, and/or berms, designed to continuously limit view of and/or sound from the site to adjacent sites or properties.

BUILDABLE AREA — That central portion of any lot between required yards and/or setback lines.

BUILDING — A combination of materials to form a construction, having a roof and adapted to permanent, temporary, or continuous occupancy.

BUILDING AREA — The total of areas determined from outside dimensions on a horizontal plane at ground level of principal and accessory buildings, exclusive of unroofed porches, terraces, stoops or steps having vertical faces, which at all points are less than three feet above the level of the ground. A pergola, awning, or similar structure having more than an area of 150 square feet and which has the effect of a roof structure shall be considered a roof for the purpose of calculating building area.

BUILDING COVERAGE — The area of a tract covered by buildings and roofed areas. Building coverage is expressed as a percentage of the total lot area.

BUILDING HEIGHT — The vertical dimension measured from the average elevation of the grade at the front of the building to the highest point of the roof. In special hazard areas, "building height" means the vertical distance measured from one foot above base flood elevation at the four corners of the smallest possible square or rectangle encompassing the proposed building to the highest point of the roof. Where property is filled prior to development, building heights shall still be measured from the existing predevelopment grade and/or highest adjacent grade as defined herein. Predevelopment grade and/or highest adjacent grade as of the date of the adoption of this ordinance¹⁶⁹ shall be determined using topographic data prepared by a New Jersey licensed land surveyor. Where deemed appropriate by the building subcode official, appropriate facade treatments shall be extended to within 24 inches of finished grade.**[Amended 4-24-2013 by Ord. No. 07-2013; 4-22-2021 by Ord. No. 07-2021]**

BUILDING LINE (SETBACK LINE) — The line beyond which a building shall not extend unless otherwise provided in this chapter.

BUILDING PERMIT — A permit used for the alteration or erection of a building or structure in accordance with the provisions of the Uniform Construction Code.¹⁷⁰

BUILDING, PRINCIPAL — A structure in which is conducted the principal use of the site on which it is situated. In any district, any dwelling shall be deemed to be a principal building on the lot on which it is located.

BULKHEAD — A structure separating land and water areas, primarily designed to resist earth pressures.

BULK STORAGE — The stockpiling or warehousing of materials, which may or may not be enclosed within a structure, including, but not limited to, sand, gravel, dirt, asphalt, lumber, pipes, plumbing supplies, metal, concrete and insulation.

BUSINESS OFFICE — A business establishment which does not offer a product or merchandise for sale to the public, but offers or provides a service, primarily administrative or clerical in nature. Business offices are all those offices which are not professional or medical offices and includes but is not limited to the following:

- A. Insurance companies.
- B. Trade associations.
- C. Real estate companies.
- D. Investment brokerage houses.
- E. Banks and trust companies.
- F. Advertising or public relations agencies.
- G. Computer and data processing.
- H. Management and consulting services.
- I. Adjustment and collecting services.
- J. Consumer credit reporting agencies.

CALIPER — The diameter of a tree trunk measured in inches, six inches above ground level for trees up to

¹⁶⁹.Editor's Note: This ordinance refers to Ord. No. 07-2021, adopted 4-22-2021. Prior amendment includes Ord. No. 07-2013.

¹⁷⁰.Editor's Note: See N.J.A.C. 5:23 and Ch. 136, Construction Codes, Uniform.

four inches in diameter and measured 12 inches above ground level for trees over four inches in diameter.

CANOPY — The same as "awning."

CAPITAL IMPROVEMENT — A governmental acquisition of real property or major construction project.

CAPITAL IMPROVEMENTS PROGRAM — A proposed schedule of all future projects listed in order of construction priority together with cost estimates and the anticipated means of financing each project.

CAPPED SYSTEM — A completed water supply and/or sewerage system put in place for future use (contingent upon expansion), rather than to meet immediate development needs.

CAR WASH — A facility for the washing and cleaning of automobiles and other motor vehicles using production line methods with a conveyor, blower and other mechanical devices and/or providing space, material and equipment to individuals for self-service washing and cleaning of automobiles.

CARPORT — A covering or roof to allow the parking of automobiles underneath. With the exception of supports, the carport shall have no sides unless such sides are the exterior walls of an adjacent building.

CARTWAY — The actual road surface area from curblineto curblineto, which may include travel lanes, parking lanes, and deceleration and acceleration lanes. Where there are no curbs, the cartway is that portion between the edges of the paved, or hard surface, width.

CELLAR — A story wholly or partly underground and having a) no more than 75% of its cubic volume above the average level of the adjoining ground, and b) vertical distance between the average level of finished grade at the front of the building and the interior ceiling height of the level shall not exceed three feet. (See Appendix Exhibit 5-5, Illustration of Cellar Requirements.¹⁷¹)[**Amended 4-22-2021 by Ord. No. 07-2021**]

CENTER-LINE OFFSET OF ADJACENT INTERSECTIONS — The gap between the center line of roads adjoining a common road from opposite or same sides.

CERTIFICATE OF COMPLETENESS — A certificate issued by the Administrative Officer after all required submissions have been made in proper form, certifying that an application for development is complete.

CERTIFICATE OF NONCONFORMANCE — A document issued by the Administrative Officer for nonconforming use or structure existing at the time of passage of this chapter or any amendment thereto which, pursuant to N.J.S.A. 40:55D-68, may be continued upon the lot or in the building so occupied. Such certificate may be obtained at the owner's request upon any change of ownership for nonconforming use, structure or lot.

CERTIFICATE OF OCCUPANCY — A certificate issued by the Zoning Officer upon completion of construction and/or alteration of any building; or change in use of any building; or change in occupancy of any building. Said certificate shall acknowledge compliance with all requirements of these regulations, such adjustments thereto granted by the Planning Board and/or all other applicable requirements.

CHANGE IN USE — [**Amended 5-14-2014 by Ord. No. 07-2014**]

- A. Any increase in the number of units in a structure which would result in three or more total residential dwelling units; or any increase in the number of units in a structure which would result in two or more units for nonresidential occupancy.
- B. Any change from a residential use to any nonresidential use.

171.Editor's Note: Exhibit 5-5 is included as Attachment 5 of this chapter.

- C. Any change from one nonresidential use to another nonresidential use, except that upon submission of adequate proofs to the Zoning Officer the following circumstances shall not be considered a change in use:
- (1) Change in ownership of the property or ownership of the entity occupying the premises.
 - (2) Any change from one non-residential use to another nonresidential use that:
 - (a) Is a permitted principal use in the zone.
 - (b) Does not involve any standard set forth in this Chapter 150 which is greater or more restrictive than the prior nonresidential use with which existing improvements do not comply.
 - (c) Is fully compliant with the performance standard requirements of § 150-67.
 - (d) Is fully compliant with the property maintenance requirements of § 150-68.

CHANNELIZATION — The straightening and deepening of channels and/or the surfacing thereof to permit water to move rapidly and/or directly.

CHILD-CARE CENTER — A state-certified facility which provides care for children.

CHURCH — See "place of worship."

CIRCULATION — Systems, structures and physical improvements for the movement of people, goods, water, air, sewage or power by such means as streets, highway, railways, waterways, towers, airways, pipes and conduits, and the handling of people and goods by such means as terminals, stations, warehouses, and other storage buildings or transshipment points.

CLUBHOUSE — A building to house a club or social organization not conducted for profit and which is not an adjunct to or operated by or in connection with a public tavern, cafe or other public place.

COASTAL AREA FACILITIES REVIEW ACT (CAFRA) PERMIT — A permit issued for specific development within the coastal area of New Jersey in accordance with N.J.S.A. 13:19 et seq. and in accordance with rules and regulations promulgated hereunder.

COASTAL WETLANDS — The coastal wetlands designated by the New Jersey Wetlands Act of 1970.¹⁷²

COMMERCIAL PARKING FACILITY — The same as "parking area, public"; also see "garage, public" and "vertical parking garage."

COMMERCIAL ZONING — HBD Historic Business District, CBD Central Business District, HB Highway Business, WB Waterfront Business, MR Marine Recreation, LI Light Industrial and O-R Office Residential Zone, of these Development Regulations.

COMMON DEVELOPMENT LINE — A line within a tract or lot which designates the extent of a proposed development or improvements, separate developments within a single tract, or separate stages of development within the tract. Proposed improvements within a tract or site plan shall be shown for the entire tract, on both sides of any common development line.

COMMON LATERAL — A lateral serving more than one unit.

COMMON OPEN SPACE — An open space area within or related to a site designated as a development, and designed and intended for the use or enjoyment of residents and owners of the development. Common open space may contain such complementary structures and improvements as are necessary and

¹⁷².Editor's Note: See N.J.S.A. 13:9A-1 et seq.

appropriate for the use or enjoyment of residents and owners of the development.

COMMUNITY RESIDENCE FOR THE DEVELOPMENTALLY DISABLED — Any community residential facility housing up to 16 developmentally disabled persons which provides food, shelter, and personal guidance for developmentally disabled persons who require assistance, temporarily or permanently, in order to live independently in the community. Such residences shall not be considered health care facilities within the meaning of the Health Care Facilities Planning Act, P.L. 1977, c. 136 (N.J.S.A. 26:2H-1 et seq.), and shall include, but not be limited to, group homes, halfway houses, supervised apartment living arrangements and hotels.

COMPLETE APPLICATION — An application for development which complies in all respects with the appropriate submission requirements set forth in this chapter, including an application form completed as specified by this chapter and the rules and regulations of the Planning Board, and all accompanying documents required by this chapter for approval of the application for development, including where applicable, but not limited to, a site plan or subdivision plat; provided that the Planning Board may require such additional information not specified in this chapter, or any revisions in the accompanying documents, as are reasonably necessary to make an informed decision as to whether the requirements necessary for approval of the application for development have been met. The application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents so required by the Planning Board. An application shall be certified as complete immediately upon the meeting of all requirements specified in this chapter and in the rules and regulations of the Planning Board, and shall be deemed complete as of the day it is so certified by the Review Committee of the Planning Board for purposes of the commencement of the time period for action by the Planning Board.

CONCEPT PLAN — A preliminary presentation and attendant documentation of a proposed subdivision or site plan of sufficient accuracy to be used for the purpose of discussion and classification.

CONDITIONAL USE — A use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in this chapter, and upon the issuance of an authorization thereof by the Planning Board.

CONDOMINIUM — An ownership arrangement, not a land use; therefore, it is allowed in any zone and under the same restrictions as the residential land uses that it comprises. A condominium shall not negate lot nor other requirements intended to provide adequate light, air, and privacy. A condominium is a dwelling unit which has all of the following characteristics:

- A. The unit (the interior and associated exterior areas designated for private use in the development plan) is owned by the occupant.
- B. The unit may be any permitted dwelling type.
- C. All or a portion of the exterior open space and any community interior spaces are owned and maintained in accordance with the provisions for open space, roads, or other development features as specified in this chapter.

CONSTRUCTION — Any work, disturbance or other act associated with the creation, improvement or work on or for the benefit of any structure, permanent improvement, environmental control measure or action required to achieve the goal of this chapter.

CONVENTIONAL DEVELOPMENT — Development other than planned development, as defined herein.

CORNER LOT — A lot on the junction of and abutting two or more intersecting streets where the interior angle of intersection does not exceed 135°.

CORPORATION STOP — Also known as corporation cock. A valve which is placed in a building's water or gas service pipe near its junction with the public water or gas main.

COUNTRY CLUB — A facility for golf, tennis and related recreational uses which may include a clubhouse, restaurant, and incidental lodging for members or guests.

COUNTY MASTER PLAN — A composite of the comprehensive plan or master plan for the physical development of Monmouth County with the accompanying maps, plats, charts, and descriptive and explanatory matter adopted by the County Planning Board pursuant to N.J.S.A. 40:27-2 and 40:27-4.

COUNTY PLANNING BOARD — The Planning Board of the County of Monmouth as defined in N.J.S.A. 40:27-6.1.

COURT or COURTYARD — An unoccupied open space on the same lot with a building, which is bounded on three or more sides by building walls.

COVERAGE — The same as "lot coverage."

CRITICAL AREA — A sediment-producing highly erodible or severely eroded area.

CUL-DE-SAC — A local street with only one outlet and having the other end for the reversal of traffic movement.

CULVERT — A structure designed to convey a watercourse not incorporated in a closed drainage system under a road or pedestrian walk.

CURB — A vertical or sloping edge of a roadway. See also "Belgian block curb" and "barrier curb."¹⁷³

CURB LEVEL — The officially established grade of the curb in front of the midpoint of the front lot line.

CUSHION — Supportive or protective bedding materials placed underneath piping.

DAY CAMP — An organized and supervised daytime facility used for recreational purposes and licensed as required by the New Jersey Department of Health and Senior Services.

DAY-CARE CENTER — See "child-care center."

DAY(S) — Calendar day(s).

DENSITY — The permitted number of dwelling units per gross acre of land to be developed, including streets, easements and open space portions of a development.

DESIGN FLOOD — The relative size or magnitude of a major flood of reasonable expectancy, which reflects both flood experience and flood potential and is the basis of the delineation of the floodway, the flood hazard area, and the water surface elevations.

DESIGN GUIDELINES — Guidelines that provide a general framework for sound planning.

DESIGN STANDARDS — Standards that set forth specific improvement requirements.

DETENTION BASIN — A man-made or natural water collector facility designed to collect surface and subsurface water in order to impede its flow and to release the same gradually at a rate not greater than that prior to the development of the property, into natural or man-made outlets.

DETRIMENTAL IMPACT — Erosion, slumping, runoff or other consequence likely to result in the destabilization or damage to a slope area, or damage to an historic, cultural, archaeological or environmental resource.

DEVELOPER — The legal or beneficial owner or owners of a lot or of any land proposed to be included in

173.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

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

DEVELOPMENTALLY DISABLED — Experiencing a disability which originates before 18 years of age, which has continued or is expected to continue indefinitely, which constitutes a substantial handicap, and which is attributable to mental retardation, cerebral palsy, epilepsy, autism, or other conditions found by the Commissioner of Human Services to give rise to an extended need for similar services.

DEVELOPMENT PERMIT — A document signed by the Zoning Officer 1) which is required by this chapter as a condition precedent to the commencement of a use or the erection, construction, reconstruction, alteration, conversion or installation of a structure or building; and 2) which acknowledges that such use, structure or building complies with the provisions of this chapter, or variance therefrom, duly authorized by a Planning Board.

DEVELOPMENT REGULATION — This chapter, official map ordinance, or other municipal regulation of the use and development of land, or amendment thereto adopted and filed pursuant to N.J.S.A. 40:55D-1 et seq.

DISTRICT — Any part of the territory of the Borough which is designated as a zone on the Zoning Map (on file in the Municipal Clerk's office) and to which certain uniform regulations and requirements of this chapter apply.

DIVIDED HIGHWAY — The same as "dual road."

DRAINAGE — The removal of surface water or groundwater from land by drains, grading or other means and includes control of runoff during and after construction or development to minimize erosion and sedimentation, to assure the adequacy of existing and proposed culverts and bridges, to induce water recharge into the ground where practical, to lessen nonpoint pollution to maintain the integrity of stream channels for their biological functions as well as for drainage and the means necessary for water supply preservation or prevention or alleviation of flooding.

DRAINAGE FACILITY — Any component of the drainage system.

DRAINAGE RIGHT-OF-WAY — The lands required for the installation of stormwater sewers or drainage ditches, or required along a natural stream or watercourse for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage.¹⁷⁴

DRAINAGE SYSTEM — The system through which water flows from the land, including all watercourses, water bodies and wetlands.

DRIVE-IN ESTABLISHMENT — An establishment which accommodates patrons' automobiles from which the occupants may receive a service, or obtain a product which may be used or consumed, in the vehicle, on the same premises.

DRIVE-IN RESTAURANT — The same as "restaurant, drive-in."

DRIVEWAY — A paved or unpaved area used for ingress or egress of vehicles, and allowing access from a street to a building or other structure or facility.

174.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

DROP MANHOLE — A manhole provided for inspection and maintenance of sewers where an incoming sewer is considerably higher than the outgoing.

DROP PIPE — A vertical pipe used to convey sewage from a higher to a lower elevation.

DRY LINES — See "capped system."

DUAL ROAD — A street, as defined by this chapter, in which the lanes for traffic in opposing directions are separated by a median strip, center island, or other form of barrier, the crossing of which is prevented other than at designated locations.

DWELLING — Any building or portion thereof designed or used exclusively for one or more dwelling units.

DWELLING UNIT — A building or part thereof having cooking, sleeping, and sanitary facilities designed for, or occupied by, one family, and which is entirely separated from any other dwelling unit in the building by vertical walls, or horizontal floors, unpierced, except for access to the outside or a common cellar.

DWELLING, MULTIPLE — A building designed for or containing three or more dwelling units, which are entirely separated from each other by vertical walls or horizontal floors, unpierced, except for access to outside or a common cellar.

DWELLING, SINGLE-FAMILY — A detached building designed for or containing one dwelling unit.

DWELLING, TWO-FAMILY — A detached building designed for or containing two dwelling units, which are entirely separated from each other by vertical walls, unpierced, except for access to the outside or a common cellar.

EASEMENT — A right-of-way granted, but not dedicated, for limited use of private land for a public or quasi-public purpose and within which the owner of the property shall not erect any permanent structures.

EAVE — The lower border of a roof that joins or overhangs the wall.

EDUCATIONAL USE — Public, parochial or private elementary or secondary schools, duly licensed by the State of New Jersey, attendance at which is sufficient compliance with the compulsory education requirements of the state. Summer day camps shall not be considered as educational uses or accessories to such uses. Duly accredited colleges and universities shall also be considered educational uses.

ELEEMOSYNARY — The giving of money and/or services to a charitable or philanthropic organization.

ENVIRONMENTAL COMMISSION — The municipal Environmental Commission, a municipal advisory body created pursuant to N.J.S.A. 40:56A-1 et seq.

ENVIRONMENTAL CONSTRAINTS — Features, natural resources, or land characteristics that are sensitive to improvements and may require conservation measures or the application of creative development techniques to prevent degradation of the environment, or may require limited development, or in certain instances may preclude development.

ENVIRONMENTAL IMPACT STATEMENT (E.I.S.) — For the purposes of this chapter, a compilation of studies, reports, documents and findings of fact prepared by an applicant as part of and for a development application. An environmental impact statement meeting the requirements of N.J.S.A. 13:19-1 et seq., the Coastal Area Facility Review Act, and specifically outlined in Section 7 of said rules and regulations promulgated in compliance with said Act will be accepted in lieu an E.I.S.¹⁷⁵

ERECT — To build, construct, attach, place, suspend, affix, and paint.

EROSION — The detachment and movement of soil or rock fragments by water, wind, ice, and/or gravity.

175.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ESCROW — A deed, bond, money or a piece of property delivered to a third person to be delivered by him to the grantee only upon fulfillment of a condition.

ESSENTIAL SERVICES — Facilities installed and/or maintained by a public utility or governmental agency, including gas, electrical, (phone) telephone, telegraph, water, sewage transmission and/or distribution systems and other similar services including mains, drains, sewers, pipes, conduits, cables, and normal aboveground appurtenances such as fire alarm boxes, police call boxes, light standards, poles, traffic signals, and hydrants, and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by public utilities or municipal or other government agencies necessary for the general health, safety and welfare of the public. Essential services shall not be deemed to include wireless telecommunications towers and antennas. **[Amended 10-26-2005 by Ord. No. 17-2005]**

EXCAVATION or CUT — Any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated.

EXCAVATION WORK — The excavation, removal, replacement, repair, construction, or other disturbance of any portion of the public improvements within a public street or drainage right-of-way. These public improvements include, but are not limited to, curb, sidewalk, driveway, and driveway aprons, drainage structures and conduits, pavements, base courses, gutters, retaining walls, channels, headwalls, railings, guard rails, or any other public improvement existing within the public right-of-way. For the purposes of this chapter, that work which is being performed outside of the public right-of-way, but which requires the storage of materials or the operation of equipment within the public right-of-way, in such a manner as may cause damage, will also be deemed excavation work. Excavation work shall also include the construction, addition, installation, or other provision of the whole or portions of the improvements within a public street, drainage right-of-way or other public way or public grounds by persons other than those exempted from the provisions of this chapter, including privately sponsored construction of curbing, sidewalks, pavement extensions, aprons, drainage or any other portions of the public improvements.

EXEMPT DEVELOPMENT — That site plan and/or subdivision approval shall not be required prior to issuance of a development permit for the following:

- A. Construction, additions, or alterations related to single-family or two-family detached dwellings or their accessory structures on individual lots.
- B. Any change in occupancy which is not a change in use (as herein defined).
- C. Individual applications for accessory mechanical or electrical equipment, whose operation and location conforms to the design and performance standards of this chapter, and whose installation is on a site already occupied by an active principal use for which site plan approval is not otherwise required.
- D. Sign(s) which installation is on a site already occupied by a principal use for which site plan approval is not otherwise required and provided such sign(s) conform to the applicable design and zoning district regulations of this chapter.
- E. Construction or installation of essential services.
- F. Division of property and conveyances so as to combine existing lots, which are not considered to be subdivisions in accordance with the definition of "subdivision" contained within this article.
- G. Demolition of any structure or building not listed on the State or National Register of Historic Places or identified as an historic or landmark site on the Master Plan, provided that the

demolition does not involve changes to the site outside the limits of the structure or building nor does it create any nonconformity.

FAA — The Federal Aviation Administration.[Added 10-26-2005 by Ord. No. 17-2005]

FAMILY — One or more persons living together as a single entity or nonprofit housekeeping unit, as distinguished from individuals or groups occupying a hotel, club, fraternity or sorority house. The family shall be deemed to include necessary servants when servants share the common housekeeping facilities and services.

FCC — The Federal Communications Commission.[Added 10-26-2005 by Ord. No. 17-2005]

FENCE — A structure constructed of wood, masonry, stone, wire, metal or any other manufactured material or combination of materials serving as an enclosure, barrier, or boundary.

FENCE, OPEN — A fence in which two-thirds of the area, between grade level and the top cross member (wire, wood or other material), is open.

FINAL APPROVAL — The official action of the Planning Board taken on a preliminary approved major subdivision or site plan after all conditions, engineering plans and other requirements have been completed or fulfilled and the required improvements have been installed or guarantees properly posted for their completion, or approval conditioned upon the posting of such guarantees.

FINAL PLAT — The final map of all or a portion of the site plan or subdivision which is presented to the Planning Board for final approval in accordance with the provisions of this chapter, and which is approved and shall be filed with the proper county office.

FLAT ROOF — A roof having a continuous horizontal surface with a minimal pitch and arranged to be essentially parallel to the floor plane.

FLOOD or FLOODING — A general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland or tidal waters; and/or
- B. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOODPLAIN — The relatively flat area adjoining any natural or man-made stream, pond, lake, river, or any other body of water which is subject to a one-hundred-year flood.

FLOODPLAIN ENCROACHMENT PERMIT — Permission of the Borough to build in accordance with municipal floodplain regulations.

FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 0.2 foot.

FLOOR — A story of a building.

FLOOR AREA — The sum of the gross areas of the floor or floors of all principal or accessory buildings, including parking levels, basements and cellars, measured between the inside faces of exterior walls or from the center line of walls common to two structures or uses. For the purpose of determining required parking, areas used for parking will not be considered floor area.

FLOOR AREA RATIO, USEABLE — The floor area of buildings compared to the total area of the site. For residential uses, the useable floor area ratio shall be calculated exclusive of the floor area of basements or cellars except that 50% of the floor area of basements having a ceiling height of seven feet or greater shall be included. For nonresidential uses, the useable floor area ratio shall be calculated inclusive

of the floor area of basements or cellars having a ceiling height of seven feet or greater. For mixed-use commercial/residential uses in the HBD and CBD Zones and for mixed-use light industrial/business/residential uses in the LI Zone, the useable floor area ratio shall be calculated exclusive of the floor area of basements or cellars that is used to provide on-site parking. **[Amended 5-26-2010 by Ord. No. 11-2010]**

FLOOR AREA, SALES — The sum of the gross horizontal areas of the floor or several floors of a commercial building which are used for display of merchandise to the general public and including any areas occupied by counters, showcases, or display racks, and any aisles, entranceways, arcades, or other such public areas.

FLOOR AREA TOTAL — The same as "floor area."

FLUSHING — The cleaning out of debris and sediment from pipes by force of moving liquid, usually water.

FOUNDATION — The part of a building or structure, usually of masonry or similar construction and located principally below the ground, that transfers and distributes the weight of the building or structure onto the ground. **[Added 3-24-2010 by Ord. No. 05-2010]**

FUNERAL HOME or MORTUARY — A funeral home or mortuary operated by a licensed mortician in accordance with N.J.S.A. 45:7-23 et seq. A funeral home or mortuary shall not be considered a professional office.¹⁷⁶

GABLE ROOF — A double-sloping roof that forms a gable at each end.

GARAGE — A detached accessory building or portion of a main building for the parking or temporary storage of automobiles of the occupants of the main building to which the garage is accessory. A garage shall be deemed attached and a portion of the main building only if an area of at least 25% of the total area of the outside walls of the vehicle storage (garage) area is attached and connected to the main building by an enclosed structure or building elements. Connections to the main building by means of a nonenclosed breezeway or decorative roof do not constitute an attachment, and a garage so connected shall constitute a detached accessory building. **[Amended 11-25-1998 by Ord. No. 17-98]**

GARAGE, PRIVATE — An enclosed building used as an accessory to the main building which provides for the storage of motor vehicles and in which no occupation, business, or service for profit is carried on.

GARAGE, PUBLIC — A building or part thereof, other than a private garage, used for the storage, care or repair of motor vehicles for profit, including any sale of motor vehicle accessories, or where any such vehicles are kept for hire. The rental of storage space for more than two motor vehicles not owned by occupants of the premises shall be deemed a public garage.

GARDEN APARTMENT — One or more multiple-family dwelling structures not more than two stories in height, with not more than 20 dwelling units per structure and so laid out that no individual dwelling unit can be sold independently on a separate parcel of land.

GASOLINE FILLING STATION — The same as "motor vehicle service station."

GENETICALLY ENGINEERED MATERIAL — Any substance which results from the directed alteration of genetic material through intervention in genetic processing, including techniques whereby recombinant DNA is produced and made to function as an organism.

GOVERNING BODY — The Borough Council of Atlantic Highlands.

GRADE, EXISTING — The existing undisturbed elevation of land, ground, and topography preexisting or existing on a lot, parcel or tract of land at the time of the adoption of this chapter.

176. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

GRADE, FINISHED — The completed surface of lawns, walks and roads brought to grade(s) as shown on official plans or designs relating thereto or as existing if no plans or designs have been approved.

GROUND COVER — Low-growing plants or sod that in time form a dense mat covering the area in which they are planted preventing soil from being blown or washed away and the growth of unwanted plants.

GROUND SIGN — Any sign supported by either uprights affixed to the ground or supported by a base affixed to the ground.

GUTTER — A shallow channel usually set along a curb or the pavement edge of a road for purposes of catching and carrying off runoff water.

HABITABLE ROOM — Any room within a building used for the purpose of sleeping, eating, preparation of food, offices, selling of merchandise, public gatherings, or assembly lobbies. All habitable rooms within a dwelling unit shall have natural light, ventilation, and heat. Garages, bathrooms, closets, storage areas, hallways, stairs are not considered to be habitable rooms.

HAZARDOUS MATERIALS — Including, but not limited to, inorganic mineral acids of sulfur, fluorine, chloride, nitrogen, chromium, phosphorus, selenium and arsenic and their common salts; lead, nickel, and mercury and their inorganic salts or metallo-organic derivatives; coal tar acids, such as phenols and cresols, and their salts; petroleum products; and radioactive materials.

HEALTH CARE FACILITY — The facility or institution, whether public or private, engaged principally in providing services for health maintenance organizations, diagnosis, or treatment of human disease, pain, injury, deformity, or physical condition, including, but not limited to, a general hospital, special hospital, mental hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate bioanalytical laboratory (except as specifically excluded hereunder), or central services facility serving one or more such institutions but excluding institutions that provide healing solely by prayer and excluding such bioanalytical laboratories as are independently owned and operated, and are not owned, operated, managed, or controlled, in whole or in part, directly or indirectly, by any one or more health care facilities, and the predominant source of business of which is not by contract with health care facilities within the State of New Jersey and which solicit or accept specimens and operate predominantly in interstate commerce.

HIGH WATER LINE — For the purposes of this chapter, a line showing the upper inland wetlands boundary on a series of maps prepared by the State of New Jersey Department of Environmental Protection for in accordance with the provisions of The Wetlands Act, N.J.S.A. 13:9A-1 et seq., said line being established from photographs and each of these maps being on file in the office of the County Clerk, Monmouth County, New Jersey.

HISTORIC DISTRICT — One or more historic sites and intervening or surrounding property significantly affecting or affected by the quality and character of the historic site or sites.

HISTORIC SITE — Any real property, man-made structure, natural object or configuration or any portion or group of the foregoing which has been formally designated in the Master Plan as being of historical, archaeological, cultural, scenic or architectural significance.

HOME OCCUPATION — Any use customarily conducted for profit entirely within the principal dwelling and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes, and does not change the character thereof, provided that no article is sold or offered for sale except such as may be produced on the premises and provided, further, that no machinery or equipment is used which will cause electrical or other interference with radio and television reception in adjacent residences, or cause offensive noise or vibration. Such activities as clinics, hospitals, barber shops, beauty parlors, tea rooms, tourist homes, animal hospitals, nursery schools, and music or dancing schools other than for individual instruction shall not be deemed home occupations under the

terms of this chapter. No more than two persons not residing in the dwelling unit shall be employed in the activity.

HOME PROFESSION — (See "profession, home.")

HOSPITAL — A building or series of buildings, primarily for treatment of patients to be housed on the premises, and providing health, medical and surgical care for sick or injured human beings, including, as an integral part of the building, such related facilities as laboratories, outpatient departments, clinics, training facilities, central service facilities and staff offices. The definition of "hospital" shall not include nursing homes, medical care centers and the like.

HOUSEHOLD — The person or persons occupying a dwelling unit.

HOUSE TRAILER — Any dwelling unit which is equipped with wheels or similar device used for the purpose of transporting such unit from place to place whether by its own motive power or other means or any unit for temporary living or sleeping purposes temporarily located in the locality, whether the same is on blocks, posts or any other type of nonpermanent foundation.

HYDROLOGIC RESPONSE — The properties, distribution, and circulation of water.

IES — Illuminating Engineering Society.

ILLUMINATED SIGN — Any sign which has characters, letters, figures, designs, or outlines illuminated by electric lights or luminous tubes as a part of the sign proper, including external and detached illumination.

IMPERVIOUS SURFACE — A surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration of water and causes surface runoff.

IMPOUNDMENT — A body of water, such as a pond, confined by a dam, dike, floodgate or other barrier.

IMPROVED PARKING AREA — An area for the temporary location of motor vehicles which has been modified from its natural condition by excavation, fill or structures.

IMPROVED STREET — A street curbed and paved in accordance with the standards set forth in this chapter for new streets or, alternately, a street which has been improved to the standards specified by the Borough Engineer.

IMPROVEMENT — Any man-made, immovable item which becomes part of, placed upon, or is affixed to, real estate.

INDIVIDUAL SEWAGE DISPOSAL SYSTEM — A septic tank, seepage tile sewage disposal system, or any other approved sewage treatment device serving a single unit.

INTERESTED PARTY — In a criminal or quasi-criminal proceeding, any citizen of the State of New Jersey; and in the case of a civil proceeding in any court or in an administrative proceeding before a Planning Board, any person, whether residing within or without the municipality, whose rights to use, acquire, or enjoy property is or may be affected by any action taken under N.J.S.A. 40:55D-1 et seq. or under any other law of this state or of the United States have been denied, violated or infringed by an action or failure to act under N.J.S.A. 40:55D-1 et seq. or this chapter.

INTERIOR OR INSIDE LOT — A lot bounded by a street on one side only.

INTERIOR STREET OR ROAD — A street or road that is developed wholly within a parcel under one ownership and meeting all municipal standards.

INTERNAL STREET OR ROAD — A street used for internal vehicular circulation within a tract or development. Major internal streets are those internal streets which have an entrance and/or exit on the access street or right-of-way frontage of the tract. Internal streets may be private and not dedicated or

deeded to the public, subject to approval by the Planning Board and by the Municipal Engineer.

ISLAND — In street design, a raised area usually curbed, placed to guide traffic, separate lanes, or used for landscaping, signing, or lighting.

ITE — Institute of Transportation Engineers.

JETTY — A projection of stone, brick, wood or other material, but generally formed of piles, serving as a protection against the encroachment or assault of the waves and currents.

JUNK OR SALVAGE YARD — The use of any area and/or structure keeping or abandonment of junk, including scrap metal, glass, paper, cordage, or other scrap material, or for the dismantling, demolition or abandonment of structures, automobiles or other vehicles, equipment and machinery, or parts thereof; provided, however, that this definition shall not be deemed to include those dropoff centers for recyclable materials designated by the Mayor and Council of the Borough in accordance with Chapter 300, Solid Waste, Article III, Recycling. The term "junkyard" as herein defined includes automobile salvage or wrecking yards. The storage or other use of not more than three disabled vehicles in conjunction with a public garage shall not be considered a junkyard.

KENNEL — An establishment for the breeding or boarding of dogs or cats.

KITCHEN — An area used or designed to be used for the preparation of food.

LAKES and PONDS — Natural or man-made bodies of water which normally contain or retain water for extended periods. Ponds are bodies of water with a surface area, measured under ten-year storm conditions, of two acres or less. Lakes are bodies of water with a surface greater than two acres, measured under ten-year storm conditions. The shoreline of a lake or pond is measured at the perimeter of the surface of water under ten-year storm conditions, as certified by the applicant's licensed land surveyor, and approved by the Municipal Engineer.

LAND — Any real property including improvements and fixtures on, above or below the surface.

LAND DISTURBANCE — Any activity involving the clearing, grading, transporting, filling of land, and any other activity which causes land to be exposed to the danger of erosion.

LANDSCAPE or LANDSCAPING — The orderly, planned arrangement of shrubs, ground cover, flowers, trees and other plant material, including incidental use of berms and decorative mulches, gravel and similar materials to produce an aesthetically pleasing appearance, to satisfy ground stabilization requirements, and/or providing a visual screen, all arranged and implemented in accordance with good landscaping and horticultural practices.

LATERAL SEWERS — Pipes conducting sewage from individual buildings to larger pipes called trunk or interceptor sewers that usually are located in street rights-of-way.

LOADING SPACE — An off-street space or berth on the same lot with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials. Such space must have clear means of ingress and egress to a public street at all times.

LOT — A designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit. Includes the word "plot."

LOT AREA — The acreage and/or square footage of a lot contained within the lot lines of the property. Any portion of a lot included in a street right-of-way shall not be included in calculating lot area.

LOT, CORNER — Any lot at the junction of and fronting on two or more intersecting streets.

LOT COVERAGE — The impervious surface area of a lot covered by buildings and structures. Lot coverage is expressed as a percentage of the total lot area and shall include all parking areas, vehicular

accessways, and internal roadways whether covered by an impervious or pervious material.

LOT FRONTAGE — The distance measured on a horizontal plane between the side lot lines measured along the street line. The minimum lot frontage shall not be less than the required lot frontage except that on curved alignments with an outside radius of less than 500 feet, the minimum distance between the side lot lines measured at the street line shall not be less than 60% of the required minimum lot frontage. Where the lot frontage is so permitted to be reduced, the lot width at the building setback line shall not be less than the required minimum frontage of the zone district. For the purpose of this chapter, only continuous uninterrupted lot lines shall be accepted as meeting the frontage requirements.

LOT, INTERIOR — A lot other than a corner lot.

LOT LINE — Any line designating the extent or boundary of a lot which shall further be defined as follows:

- A. **FRONT LOT LINE** — A lot line or portion thereof which is coexistent with a street line and along which the lot frontage is calculated.
- B. **REAR LOT LINE** — The lot line most distant and generally opposite and parallel to the front lot line.
- C. **SIDE LOT LINE** — Any lot line other than a front or rear lot line.

LOT SHAPE REQUIREMENT — Lot shape requirements specified by the Illustration of Lot Shape Requirement, Exhibit 5-3.¹⁷⁷

LOT WIDTH — The distance between the property sidelines measured along the front yard setback line. Unless otherwise specified, lot width shall equal minimum lot frontage.

LOWER-INCOME HOUSEHOLD — A household whose income is within the current moderate- or low-income limits for the Borough's housing region as established by the New Jersey Council on Affordable Housing.

LOWEST FLOOR — The lowest level (including basement, crawl space and garage) of the lowest enclosed area.

MAINTENANCE BOND — Any security that is acceptable to the governing body to assure the maintenance of approved installations by developers.

MAINTENANCE GUARANTEE — Any security, which may be accepted by the Borough for the maintenance of any improvements required by N.J.S.A. 40:55D-1 et seq. and this chapter, including, but not limited to, surety bonds, letters of credit under the circumstances specified in N.J.S.A. 40:55D-53.5, and cash.

MAJOR SITE PLAN — Any site plan not classified as a minor site plan or exempt site development.

MAJOR SUBDIVISION — Any subdivision not classified as a minor subdivision.

MANHOLE — An inspection chamber whose dimensions allow easy entry and exit and working room for a person inside.

MANNING EQUATION — A method for calculating the hydraulic capacity of a conduit to convey water.

MANUFACTURED HOME — A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities.

¹⁷⁷Editor's Note: Exhibit 5-3 is included at the end of this chapter.

MANUFACTURING — The treatment or processing of raw products, and the production of articles or finished products from raw or prepared materials by giving them new forms or qualities.

MARINA — Any waterfront facility wherein berthing spaces for any and all watercraft or boats are provided. A marina shall be deemed to include, in addition, automobile parking facilities; sanitary facilities; motor fuel sales; boat sales, repairs, maintenance and service, excluding, however, facilities for the construction of new boats.

MARINE ACTIVITIES — Any facilities or activity associated with fishing or boating, either for sport or for commercial gain.

MASSAGE PARLOR — **[Amended 6-26-2002 by Ord. No. 7-2002]**

- A. Any establishment devoted to the providing of massage services to persons not in connection with any medical, osteopathic, chiropractic, prescribed therapeutic or athletic or calisthenic activities.
- B. Massage parlor shall not include a massage/bodywork therapy establishment, which is a professional service licensed by the Borough and is a professional office use.

MASTER PLAN — A composite of one or more written or graphic proposals for the development of the municipality as set forth in and adopted by the Planning Board pursuant to N.J.S.A. 40:55D-28.

MAYOR — The Mayor of Atlantic Highlands.

MEDIAN — That portion of a divided highway separating the traveled ways of traffic proceeding in opposite directions.

MENTALLY ILL PERSON — A person afflicted with mental disease to such an extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community, but shall not include a person who has been committed after having been found not guilty of a criminal charge or unfit to be tried on a criminal charge by reason of insanity.

MINOR SITE PLAN — A development plan for one or more lots which is (are) subject to development which:

- A. Requires site plan approval, and
- B. Meets the requirements set forth in Article XII of this chapter and contains the information needed to make an informed determination as to whether the requirements established by this chapter for approval of a minor site plan have been met, and
- C. Meets the following conditions:
 - (1) The construction of drainage facilities is not required either on or off site.
 - (2) New building construction and/or building additions do not exceed 1,000 square feet of gross floor area.
 - (3) The proposed development does not increase parking requirements by more than five spaces.
 - (4) The proposed development conforms to the performance standards set forth in Article V.
 - (5) The proposed development will not require the issuance of a CAFRA permit.
 - (6) The proposed development does not involve planned development.

- (7) The proposed development does not involve any new street or the extension of any existing street.
- (8) The proposed development does not involve the extension or construction of any off-tract improvement, the cost of which is to be prorated pursuant to N.J.S.A. 40:55D-42.
- (9) The proposed development does not involve the disturbance of 5,000 square feet or more of ground area.

MINOR SUBDIVISION — A subdivision of land for the creation of not more than two lots plus the remainder of the original lot provided such subdivision does not involve: 1) a planned development; 2) any new street; or 3) the extension of any off-tract improvement, the cost of which is to be prorated pursuant to N.J.S.A. 40:55D-42 and provided that the Planning Board or the Subdivision Committee of the Planning Board finds that all the following conditions have been met:

- A. That curbs and sidewalks have been installed or that the developer agrees to install and post performance guarantees for curbs and sidewalks, or that curbs and sidewalks are not required due to specific conditions in the area.
- B. That the subdivision does not require the extension of municipal facilities at the expense of the municipality.
- C. That the subdivision and construction resulting therefrom will not adversely affect drainage patterns of the basin in which the lots are situated.
- D. That the subdivision will not adversely affect the development of the remainder of the parcel or the adjoining property.
- E. That the subdivision is not in conflict with any provision or portion of the Master Plan, Official Map or this chapter or that appropriate variances have been obtained (or must be obtained as a condition of approval).
- F. That no portion of the lands involved have constituted a part of a minor subdivision within three years preceding the application.

MIXED-USE DEVELOPMENT — A development containing a number of different uses in a combination permitted by ordinance which is to be developed in conformance with an approved plan.

MLUL — Municipal Land Use Law.¹⁷⁸

MOBILE HOME — The same as "house trailer."

MOTEL — A building containing rooms used, rented or hired out to be occupied for sleeping purposes by transient guests and where only a general kitchen and dining room are provided within the building or as an accessory building.

MOTOR VEHICLE REPAIR GARAGE — A building or portion of a building or land, or portion thereof, which is not primarily devoted to the retail sale of gasoline or new or used automobiles or trucks, in which auto body work or the overhauling or replacement of automobiles, automobile parts, or any portion thereof, is conducted as a business for profit.

MOTOR VEHICLE SERVICE STATION — Any area of land, including structures thereon, which is used for the retail sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle accessories and which may include facilities for lubricating, washing

¹⁷⁸ Editor's Note: See N.J.S.A. 40:55D-1 et seq.

or servicing of motor vehicles, except that auto body work of any nature and retail sales unrelated to motor vehicle uses shall be prohibited.

MULCH — A layer of wood chips, dry leaves, straw, hay, plastic, or other materials placed on the surface of the soil around plants to retain moisture, prevent weeds from growing, hold the soil in place, and aid plant growth.

MULTIFAMILY BUILDING — Any building containing three or more dwelling units within a lot. Dwelling units within multifamily buildings are classified as multifamily dwellings.

MUNICIPAL FACILITY — A facility owned, leased, or otherwise controlled by the Borough of Atlantic Highlands.**[Added 10-26-2005 by Ord. No. 17-2005]**

MUNICIPALITY — The Borough of Atlantic Highlands.

MUNICIPAL LAND USE LAW — N.J.S.A. 40:55D-1 et seq (Chapter 291, Laws of New Jersey, 1975, as amended).

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective date of this chapter.

NONCOMMERCIAL ZONE — All zones not included in commercial zone.

NONCONFORMING LOT — A lot, the area, dimension or location of which was lawful prior to the adoption, revision or amendment of this chapter, but which fails to conform to requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

NONCONFORMING STRUCTURE — A structure, the size, dimension or location of which was lawful prior to the adoption, revision or amendment of this chapter, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision, or amendment.

NONCONFORMING USE — A use or activity which was lawful prior to the adoption, revision, or amendment of this chapter, but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

NONPOINT SOURCE POLLUTION — Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

NURSERY SCHOOL — See "child-care center."

OCCUPANCY — The specific purpose for which land or a building is used, designed or maintained.

OCCUPANCY PERMIT — The same as "certificate of occupancy."

OFFICIAL COUNTY MAP — The map, with changes and additions thereto, adopted and established, from time to time, by resolution of the Board of Chosen Freeholders of Monmouth County pursuant to N.J.S.A. 40:27-5.

OFFICIAL MAP — A map adopted by ordinance by the governing body pursuant to N.J.S.A. 40:55D-32 et seq.

OFF SITE — Located outside the lot lines of the lot in question, but within the property limits (of which the lot is a part) which is the subject of a development application. Off-site areas shall include any contiguous portion of a street or right-of-way.

OFF-STREET PARKING SPACE — A temporary storage area for a motor vehicle that is directly accessible to an access aisle, and that is not located on a dedicated street right-of-way.

OFF TRACT — Not located on the property which is the subject of a development application nor on a

contiguous portion of a street or right-of-way.

ON SITE — Located on the lot in question.

ON-STREET PARKING SPACE — A temporary storage area for a motor vehicle which is located on a dedicated street right-of-way.

ON TRACT — Located on the property which is the subject of a development application or on a contiguous portion of a street or right-of-way.

OPEN PORCH OR STEPS — A porch or steps with a fixed roof no larger than six feet wide by four feet deep and with no sidewalk other than the wall of the structure to which it is attached.

OPEN SPACE — Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space, provided that such areas may be improved with only those buildings, structures, streets and other improvements that are designed to be incidental to the natural openness of the land.

OWNER — Any individual, family group, firm, association, syndicate, copartnership or corporation having sufficient proprietary interest in land which is the subject of a development proposal.

PARK — An area of open space set aside for public use and operated by a governmental entity for the purpose of active and/or passive recreation.

PARKING AREA — An open area used for the open storage of motor vehicles and includes any driveways and access drives, as well as accessory incidental structures or improvements such as curbing, drainage, lighting, and signing.

PARKING AREA, PRIVATE — An area, other than a street, intended for the same use as a private garage, is accessory to a residential or nonresidential building or use and not used by the general public.

PARKING AREA, PUBLIC — A paved open area, other than a street or other public way, used for the parking of motor vehicles and available to the public, whether for a fee, free, or as an accommodation of clients or customers.

PARKING GARAGE — The same as "garage, public."

PARKING SPACE — An off-street space provided for the parking of a motor vehicle exclusive of driveways or access drives, either within a structure or garage or in the open or as may be otherwise defined in this chapter.

PARTY IMMEDIATELY CONCERNED — For purposes of notice, any applicant for development, the owners of the subject property and all owners of property and government agencies entitled to notice under N.J.S.A. 40:55D-12.

PATIO — An area of land not used for receiving and storing material where the grounds have been surfaced with construction material such as brick, stone, cement or lumber, which does not project above grade level and which is entirely uncovered by a roof or any superstructure.

PAVEMENT — See "cartway."

PEEP SHOW — Any establishment showing to patrons in private or semiprivate viewing areas the live or photographic or magnetically recorded depictions of persons engaged in the presentation and exploitation of illicit sex, lust, passion, depravity, violence, brutality, nudity, immorality and other obscene subjects.

PERFORMANCE GUARANTEE — Any security, which may be accepted by the municipality, including, but not limited to, surety bonds, letters of credit under the circumstances specified in N.J.S.A. 40:55D-53.5, and cash.

PERFORMANCE STANDARDS — See "standards of performance."

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

PERSONAL SERVICES — An act by which skills of one person are utilized for the benefit of another, provided no function involves manufacture, cleaning, repair, storage or distribution of products or goods except for cleaning and repairing of clothing and similar personal accessories.

PERVIOUS SURFACE — Any material that permits full or partial absorption of stormwater into previously unimproved land.

PESTICIDE — Any substance or mixture of substance labeled, designed, or intended for use in preventing, destroying, repelling, sterilizing or mitigating any insects, rodents, nematodes, predatory animals, fungi, weeds and other forms of plant or animal life or viruses, except viruses on or in living man or other animals. The term "pesticide" shall also include any substance or mixture of substances labeled, designed or intended for use as a defoliant, desiccant, or plant regulator.

PETROLEUM PRODUCTS — Oil or petroleum of any kind and in any form, including crude oils and derivatives of crude oils, whether alone, as sludge, oil refuse or oil mixed with other wastes.

PET STORE — An establishment engaged in the retail sale of pets and specialized merchandise related to pets.

PLACE OF WORSHIP — A building or group of buildings, congregations, public worship including cathedrals, chapels, churches, meeting houses, mosques, synagogues, temples, and similarly used buildings, as well as accessory uses such as Sunday schools, social halls, parish houses, and similar-type buildings.

PLANNED DEVELOPMENT — Planned unit development, planned residential development, residential cluster, planned commercial development or planned industrial development.

PLANNING BOARD — The municipal Planning Board established pursuant to N.J.S.A. 40:55D-23. The Planning Board shall also exercise all of the functions, powers and duties of the former Board of Adjustment which was abolished by ordinance.

PLANNING BOARD ENGINEER — The licensed New Jersey professional engineer specifically retained by the Planning Board or assigned by the Municipal Engineer (with the consent of the Board) to render engineering services and advise to the Board. In the absence of the specific appointment of a Planning Board Engineer, the Municipal Engineer may assume the duties of the office.

PLAT — A map or maps of a subdivision or site plan.

PLAT, FINAL — The map or maps of all or a portion of the development prepared and submitted to the approving authority for final approval. Final plat shall also include and be synonymous with the term "final site plan."

PLAT, PRELIMINARY — The plat prepared and submitted to the approving authority as a part of the application for preliminary approval. Preliminary plat shall also include and be synonymous with the term "preliminary site plan."

PLOT — See "site."

PRELIMINARY APPROVAL — The conferral of certain rights pursuant to N.J.S.A. 40:55D-46, 40:55D-48, and 40:55D-49 prior to final approval after specific elements of a development plan have been agreed upon by the Planning Board and the applicant.

PRELIMINARY FLOOR PLANS AND ELEVATIONS — Architectural drawings prepared during early and introductory stages of the design of a project illustrating in a schematic form its scopes, scale,

relationship to its site and immediate environs and exterior colors and finishes.

PREMISES — A lot or tract of land or any combination thereof held under a single ownership or control.

PRIMARY OR PRINCIPAL USE — The primary or principal purpose for which a building, structure or lot is used.

PRINCIPAL BUILDING — A building in which is conducted the main or principal use on the lot on which said building is situated.

PROFESSIONAL OFFICE — The office of a member of a recognized profession, which shall only include the office of doctors or physicians, psychologists, dentists, optometrists, ministers, architects, professional engineers, professional planners, land surveyors, lawyers, artists, authors, attorneys, musicians, accountants, and insurance agents and real estate brokers with five or fewer brokers or sales agents.

PROFESSIONAL OFFICE BUILDING — A building, the occupancy of which is limited to professional offices.

PROFESSION, HOME — The office of a member of a recognized profession when conducted on a residential property, whereon said member of a profession resides. Such office shall be conducted by a member or members of the resident family entirely within a residential building and shall include only the offices of doctors, physicians, psychologists, lawyers, dentists, optometrists, ministers, architects, professional engineers, professional planners, land surveyors, authors, artists, musicians and accountants. The practice of such occupation shall in no way affect the safe comfortable enjoyment of property rights in any zone in which it is located to a greater extent than for the professional activities specified above. The issuance of a state or local license for regulation of any gainful occupation need not be deemed indicative of professional standing. Not more than two persons not residing in the dwelling shall be employed in the office.

PROHIBITED USE — That use which is not specifically allowed or permitted in a particular zone and for which the granting of a variance of N.J.S.A. 40:55D-70d would be necessary, in order to provide that use in that particular zone.

PUBLIC AREAS —

- A. Public parks, playgrounds, trails, paths and other recreational areas;
- B. Other public open spaces;
- C. Scenic and historic sites; and
- D. Sites for schools and other public buildings and structures.

PUBLIC DEVELOPMENT PROPOSAL — A master plan, capital improvement program or other proposal for land development adopted by the appropriate public body, or any amendment thereto.

PUBLIC DRAINAGEWAY — The land reserved or dedicated for the installation of stormwater sewers or drainage ditches, or required along a natural stream or watercourse for preserving the biological as well as drainage function of the channel and providing for the flow of water to safeguard the public against flood damage, sedimentation, and erosion and to assure the adequacy of existing and proposed culverts and bridges, to induce water recharge into the ground where practical, and to lessen nonpoint pollution.

PUBLIC OPEN SPACE — An open space area conveyed or otherwise dedicated to the Borough, a Planning Board, Board of Education, federal, state, or county agency, or other public body for recreational or conservational uses.

QUORUM — The majority of the full authorized membership of a Planning Board.

RADIOACTIVE USE — Any natural or artificially produced substance or combination of substances which emits radiation spontaneously.

RATIONAL METHOD — A method of runoff calculation.

RECHARGE — The replenishment of underground water reserves.

RECREATIONAL VEHICLE — A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are travel trailer, camping trailer, truck camper, and motor home.

RECREATION AREA — Facilities and open space areas set aside, designed and/or improved, and used for recreation purposes, and may include, but shall not be limited to, play fields, golf courses, playgrounds, swimming pools, tennis courts, and other court games, tot lots, parks, picnic areas, nature preserves, boating and fishing areas and facilities.

REMOVAL — With regard to trees, shrubs, or other vegetation, any act likely to result in the death or permanent damage that might accelerate death. Normal pruning or other acts, except removal, to promote growth do not constitute removal.

RESIDENTIAL DENSITY — The number of dwelling units per gross acre of residential land, including areas used for streets, easements and/or open space portions of a development.

RESTAURANT — Any establishment, however designated, at which food is sold for consumption on the premises, normally to patrons seated within an enclosed building. However, a snack bar at a public or community playground, play field, park, or swimming pool operated solely by the agency or group operating the recreation facilities, and for the convenience of patrons of the facility, shall not be deemed to be a restaurant.

RESTAURANT, DRIVE-IN — An establishment where the majority of the patrons purchase food, soft drinks, ice cream, and similar confections for takeout or consumption on the premises but outside the confines of the principal building, or in automobiles parked upon the premises, regardless of whether or not, in addition thereto, seats or other accommodations are provided for the patrons.

RESUBDIVISION — The further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law; or the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, but does not include conveyances so as to combine existing lots by deed or by other instrument.

RETAINING WALL — A structure more than 18 inches high erected between lands of different elevation to protect structures and/or to prevent the washing down or erosion of earth from the upper slope level.

RETENTION BASIN — A pond, pool or basin used for the permanent storage of water runoff.

REVTMENT — A facing of stone, concrete, etc., built to protect a scarp, embankment, or shore structure against erosion by wave action or current.

RIGHT-OF-WAY — A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, gas pipeline, water main, sanitary or storm sewer main, shade trees, or for another special use.

ROOFTOP DECK — A load-bearing platform placed upon the outside top covering of a building or structure and which is designed to function as a usable habitable outdoor area and integral portion of a roof surface. A rooftop deck may be freestanding or attached to a building. **[Added 10-10-2018 by Ord. No. 12-2018]**

ROOMING HOUSE — The same as "boarding or lodging house."

SAND DUNES — Naturally occurring or man-made accumulations of sand in ridges or mounds landward of the beach.

SATELLITE DISH ANTENNA or SATELLITE ANTENNA — A parabolic reflector antenna which is designed for the purpose of receiving signals from and/or transmitting signals to a transmitter relay located in planetary orbit.

SCHOOL — The same as "educational use."

SCREEN — A structure or planting consisting of fencing, berms, and/or evergreen trees or shrubs providing a continuous view obstruction within a site or property.

SCS — Soil Conservation Service.

SEAWALL — A wall or embankment to resist encroachment of the sea.

SECONDARY USE — The same as "accessory use."

SEDIMENT — Solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site or origin by air, water or gravity as a product of erosion.

SEDIMENTATION — The transport and depositing of solid material by water.

SEDIMENT BASIN — A barrier or dam built at suitable locations to retain rock, sand, gravel, silt or other materials.

SENIOR CITIZEN — For the purpose of meeting the eligibility requirements of senior citizen housing, persons aged 55 and older.

SEPTIC SYSTEM — An underground system with a septic tank used for the decomposition of domestic wastes.

SEPTIC TANK — A watertight receptacle that receives the discharge of sewage.

SETBACK — The horizontal distance between a building or structure and any front, side or rear lot line, measured perpendicular to such lot lines at the point where the building is closest to such lot lines.

SETBACK LINE (BUILDING LINE) — The line beyond which a building shall not extend unless otherwise provided in this chapter.

SEWER — Any pipe conduit used to collect and carry away sewage or stormwater runoff from the generating source to treatment plants or receiving streams.

SHADE TREE — A tree in a public place, street, special easement, or right-of-way adjoining a street.

SHAPE REQUIREMENT — See "lot shape requirement."

SHED — A structure built for storage of miscellaneous items.

SHOPPING CENTER — An integrated development of such uses as retail stores and shops, personal service establishments, professional and business offices, banks, post offices, restaurants, and auditoriums, housed in an enclosed building or buildings, utilizing such common facilities as customer parking, pedestrian walkways, truck loading and unloading space, utilities and sanitary facilities and having a minimum total floor area of 20,000 square feet.

SHOULDER — The graded part of the right-of-way that lies between the edge of the main pavement (main traveled way) and the curbline.

SIDEWALK AREA — A paved path provided for pedestrian use and usually located at the side of a road

within the right-of-way.

SIGHT TRIANGLE — The triangular area intended to remain free of visual obstructions to prevent potential traffic hazards formed by two intersecting street lines or the projection of such lines which border a corner property, and by a line connecting a point on each such line located a designated distance from the intersection of the street lines.

SIGN — Any sign, billboard, ground or freestanding sign, wall sign, roof sign, sign painted on the exterior surface of a building structure, illuminated sign, projecting sign, temporary sign, awning and canopy sign and shall include any announcement, declaration, demonstration, display illustration or insignia used to advertise or promote the interests of any person, when the same is placed in view of the general public:

- A. **DIRECTIONAL SIGN** — Any sign located away from a business which gives directions to the location of the business.
- B. **GROUND OR FREESTANDING SIGN** — Any sign supported by uprights or braces placed upon the ground, and not attached to any building, tree or structure.
- C. **ILLUMINATED SIGN** — Any sign which has characters, letters, figures, designs or outlines illuminated by electric lights or luminous tubes as a part of the sign proper, including external and detached illumination.
- D. **PAINTED WALL SIGN** — Any lettering or design painted directly on the building surface.
- E. **PROJECTING SIGN** — Any sign which is attached to a building or other structure and extends beyond the line of said building or structure or beyond the surface of that portion of the building or structure to which it is attached.
- F. **ROOF SIGN** — Any sign erected, constructed and maintained wholly upon or over the roof of any building with the principal support on the roof structure.
- G. **WALL SIGN** — Includes all flat signs of solid-face construction which are placed against a building or other structure and attached to the exterior front, rear or side wall of any building or other structure and shall not project more than 12 inches from the building.

SITE — Any plot, parcel or parcels of land.

SITE PLAN — A development plan of one or more lots on which is shown:

- A. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, floodplains, marshes, and waterways;
- B. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting, screening devices; and
- C. Any other information that may be reasonably required in order to make an informed determination pursuant to the provisions of this chapter requiring review and approval of site plans by the Planning Board adopted pursuant to N.J.S.A. 40:55D-37 et seq.

SKETCH PLAT — See "concept plan."

SLOPE AREA — The areas of Atlantic Highlands covered by § 150-78, Steep slopes, of this chapter, including any structure, driveway, street, retaining wall or anything else built or placed upon, above or below the surface, and all trees, bushes or ground cover or any other vegetation.

SOIL — All unconsolidated mineral and organic material of any origin that overlies bedrock and which can be readily excavated.

SOIL CEMENT — A mixture of portland cement and locally available soil. It serves as a soil stabilizer.

SOIL CONSERVATION DISTRICT — The Freehold Soil Conservation District, a governmental subdivision of the state which was organized in accordance with the provisions of Chapter 24, Title 4, N.J.S.A. 4:24-1 et seq. **[Amended 2-23-2011 by Ord. No. 03-2011]**

SOIL DISTURBANCE — To dig, excavate, remove, grade, level or otherwise alter or change the location or contour, or to fill or supply to a lot. This term shall not be construed to include spading, cultivating or any other operation usually and ordinarily associated with the tilling of soil for agricultural or horticultural purposes.

SOIL EROSION AND SEDIMENT CONTROL PLAN — A plan which fully indicates necessary land treatment measures, including a schedule of the timing for their installation, which will effectively minimize soil erosion and sedimentation. Such measures shall be equivalent to or exceed standards adopted by the New Jersey State Soil Conservation Committee and administered by the Freehold Soil Conservation District in conformance with N.J.S.A. 40:55-120.

SOLID WASTE — Garbage, sludge, refuse, trash, rubbish, debris or other discarded solid materials.

SPECIAL FLOOD HAZARD AREA — The land area covered by the floodwaters of the base flood. **[Added 4-24-2013 by Ord. No. 07-2013]**

STABILIZED TURF OR EARTH — Turf, or earth (soil), strengthened usually by the mixing of cement or lime with the original material to achieve increased strength, thereby reducing shrinkage and movement.

STANDARDS OF PERFORMANCE — Standards, requirements, rules and regulations adopted by this chapter pursuant to N.J.S.A. 40:55D-65(d) regulating noise levels, glare, airborne or sonic vibrations, heat, electronic or atomic radiation, noxious odors, toxic matters, explosive and inflammable matters, smoke, and airborne particles, waste discharge, screening of unsightly objects or conditions and such other similar matters as may be reasonably required by the municipality or required by applicable federal or state laws or municipal agencies.

STANDARD SPECIFICATIONS — The Standard Specifications for Road and Bridge Construction as promulgated and revised by the New Jersey Department of Transportation.

STATE DEVELOPMENT AND REDEVELOPMENT PLAN — The plan established pursuant to P.L. 1985, Chapter 398,¹⁷⁹ designed for use as a tool for assessing suitable locations for infrastructure, housing, economic growth and conservation in the State of New Jersey.

STATE PLANNING COMMISSION — The commission established pursuant to P.L. 1985, Chapter 398.¹⁸⁰

STEEP SLOPES — Areas where the average slope exceeds 15% which, because of this slope, are subject to high rates of stormwater runoff and erosion.

STORMWATER DETENTION — A provision for storage of stormwater runoff and the controlled release of such runoff during and after a flood or storm.

STORMWATER RETENTION — A provision for storage of stormwater runoff.

STORY — That portion of a building between floor and ceiling. **[Amended 4-22-2021 by Ord. No.**

¹⁷⁹.Editor's Note: See N.J.S.A. 52:18A-196 et seq.

¹⁸⁰.Editor's Note: See N.J.S.A. 52:18A-196 et seq.

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STORY, HALF — That portion of a building under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two feet above the floor of such half story and cannot have a habitable area, including bathrooms, kitchens and hallways, exceeding 60% of the floor area of such half story. **[Amended 10-13-1999 by Ord. No. 6-99]**

STREET — Any street, highway, avenue, boulevard, road, parkway, viaduct, alley, drive, or other way: 1) which is an existing state, county or municipal roadway; or 2) which is shown upon a plat heretofore approved pursuant to law; or 3) which is approved by official action as provided by N.J.S.A. 40:55D; or 4) which is shown on a plat duly filed and recorded in the office of the County Recording Officer prior to the appointment of a Planning Board and grant to such Board of the power to review plats; and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas within the street lines.

STREET, ARTERIAL — Roadways with a high volume of traffic flow.

STREET, COLLECTOR — Any street that collects traffic from local streets and channels it onto the system of arterial streets.

STREET FURNITURE — Man-made, aboveground items that are usually found in street rights-of-way, including benches, kiosks, plants, canopies, shelters, and phone booths.

STREET HARDWARE — The mechanical and utility systems within a street right-of-way such as hydrants, manhole covers, traffic lights and signs, utility poles and lines, parking meters and the like.

STREET HIERARCHY — The conceptual arrangement of streets based upon function. A hierarchical approach to street design classifies streets according to function, from high traffic arterial roads down to streets whose function is residential access. Systematizing street design into a road hierarchy promotes safety, efficient land use, and residential quality.

STREET, IMPROVED — See "improved street."

STREET LINE — The line which separates the publicly owned or controlled street right-of-way from the private property which abuts upon the street; as distinct from a sidewalk line, curblin, or edge-of-pavement line. On a street or highway shown on the adopted Master Plan of the Borough of Atlantic Highlands, the street line shall be considered to be the proposed right-of-way line for the street. Where a definite right-of-way has not been established, the street line shall be assumed to be at a point 25 feet from the center line of the existing pavement.

STREET, LOCAL — Any street that provides access to lots and carries traffic having a destination or origin on the street itself.

STREET, LOOP — A street that has its only ingress and egress at two points on the same subcollector or collector street.

STREET, UNIMPROVED — A street that does not have an all-weather pavement. An unimproved street could be constructed of loose gravel, any type of loose stone, or generally any type of material that is not solidified and will not repel water or maintain a stable cross section. In the event that the Construction Official or other Borough official has any question as to whether a road is improved, unimproved, or potential drainage problems exist with regard to the issuance of a development permit, building permit or certificate of occupancy, such official shall contact the Borough Engineer for his evaluation and written determination.

STRIPPING — Any activity which removes or significantly disturbs vegetated or otherwise stabilized soil surface, including clearing and grubbing operations.

STRUCTURAL ALTERATIONS — The same as "alterations."

STRUCTURE — A combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land and including, among other things: display stands, fences and walls, gasoline pumps, gates and gate posts, mobile dwellings, outdoor bins, pergolas, platforms, pools, porches, reviewing stands, sales stands, signs, stadiums, staging, standpipes, tennis courts, tanks of any kind, tents, towers of any kind, including radio and television towers and satellite dishes. The word "structure" shall be construed as though followed by the words "or part thereof."

SUBDIVIDER — Any person or legal entity commencing proceedings under this chapter to effect the subdivision of land hereunder.

SUBDIVISION — The division of a lot, tract, or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development. The following shall not be considered subdivisions within the meaning of this act, if no new streets are created: 1) divisions of land found by the Planning Board or Subdivision Committee thereof appointed by the Chairman to be for agricultural purposes where all resulting parcels are five acres or larger in size; 2) divisions of property by testamentary or intestate provisions; 3) division of property upon court order including, but not limited to, judgments of foreclosure; 4) consolidation of existing lots by deed or other recorded instrument; and 5) the conveyance of one or more adjoining lots, tracts or parcels of land, owned by the same person or persons and all of which are found and certified by the Administrative Officer to conform to the requirements of the development regulations contained in this chapter for frontage on an improved street, zoning district regulations, and for design standards and improvement specifications; and further provided that each lot, tract, or parcel of land is shown and designated as separate lots, tracts, or parcels on the official Tax Map of the Borough. Those adjoining lots, tracts, or parcels of land shown on the official Tax Map of the Borough which are owned by the same person or persons but which individually do not conform to the zoning district regulations and/or which do not meet the required frontage on an improved street shall be treated under this chapter as a single parcel of land no portion of which may be conveyed without subdivision approval as prescribed by this chapter. The term "subdivision" shall also include the term "resubdivision."

SUBDIVISION AND SITE PLAN COMMITTEE — A committee of at least three members of the Planning Board appointed by the Chairperson of the Planning Board for the purpose of classifying, reviewing, commenting, and making recommendations on applications for subdivision and site plan approval. The Committee will have the power to approve minor subdivisions and site plans only. Only those members or alternates of the board having jurisdiction to act shall have the power to vote on a matter involving a minor subdivision or minor site plan pursuant to N.J.S.A. 40:55D-46 and 40:55D-47.

SUBGRADE — Natural ground lying beneath a road.

SURFACE WATERS — Those waters that fall on land or arise from springs and diffuse themselves over the surface of the ground following no defined course or channel.

SWIMMING POOL, COMMERCIAL — A swimming pool that is operated for profit and open to the public or to a limited number of members and their guests, upon payment of an hourly, daily, weekly, monthly, annual or other fee.

SWIMMING POOL, PRIVATE — A swimming pool located on a single family lot with a residence on it and used as an accessory to the residence, and said pool is utilized with no admission charges and not for the purpose of profit. Also, a pool located on the premises of a hotel, motel, or multifamily building or townhouse complex for use by hotel or motel guests or by residents of the multifamily building or townhouse complex.

SWIMMING POOL, PUBLIC — The same as "swimming pool, commercial."

TIDELANDS — Lands that are washed by tidal flows in accordance with the NJDEP Tideland Council

maps that are on file with the NJDEP and Municipal Clerk.

TOPSOIL — The original upper layer of soil material to a depth of six inches which is usually darker and richer than the subsoil.

TOWER HEIGHT, WIRELESS TELECOMMUNICATIONS TOWER — When referring to a wireless telecommunications tower or other structure, tower height is the distance measured from the finished grade to the highest point on the tower or other structure, including the base pad and any antenna. **[Added 10-26-2005 by Ord. No. 17-2005]**

TOWNHOUSE COMPLEX — An integrated scheme of townhouse dwellings and common lands or facilities.

TOWNHOUSE DWELLING — A building containing three or more townhouse dwelling units.

TOWNHOUSE DWELLING UNIT — A dwelling unit occupied by a single family, which unit is attached to another by a common bearing structural element, together with perpetual access and use of the open space designed as an integral part of each unit provided either by fee simple ownership, homeowners' association, or other means ensuring perpetual access and use, and having been constructed in conformity with applicable rules, regulations and chapters.

TOWNHOUSE LOT — A parcel of land created by master deed in accordance with N.J.S.A. 46:8A-1 et seq. (Horizontal Property Act).

TRACT — An area of land consisting of one or more contiguous lots under single ownership or control, used for development or for a common purpose. Tract is interchangeable with the words "site" and "premises."¹⁸¹

TRANSCRIPT — A typed or printed verbatim record, or reproduction thereof, of the proceedings of the Planning Board.

TRIP — A single or one-way vehicle movement to or from a property or study area. Trips can be added together to calculate the total number of vehicles expected to enter and leave a specific land use or site over a designated period of time.

ULI — Urban Land Institute.

UNIFORM CONSTRUCTION CODE — The New Jersey Uniform Construction Code. N.J.S.A. 52:27D-119 et seq. (N.J.A.C. 5:23-1.1 et seq.).¹⁸²

USCGS (also USC&G and USC&GS) — United States Coast and Geodetic Survey.

USE — The specific purposes for which a parcel of land or a building or a portion of a building is designed, arranged, intended, occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

USEABLE FLOOR AREA RATIO — See "floor area ratio, useable."

UTILITIES — Essential services, including, but not limited to, sewers, water, electricity, gas, and telephone, regulated by the State of New Jersey or by the federal government.

VARIANCE — Permission to depart from the literal requirements of zoning regulations of this chapter pursuant to N.J.S.A. 40:55D-40b, 40:55D-70c and 40:55D-70d.¹⁸³

181.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

182.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

183.Editor's Note: The original definition of "wall sign," which immediately followed this definition, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

WAREHOUSE — Any structure designed for or utilized primarily for the storage of goods and materials. The term shall include self-storage, mini, or other form of commercial warehouse activities.

WATERCOURSE — Channel or canal for the conveyance of water, particularly drainage lands.

WETLANDS (NONTIDAL OR FRESHWATER) — An area regulated by the New Jersey Freshwater Wetlands Act (N.J.S.A. 13:9B-1 et seq.) that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as "hydrophytic vegetation."

WETLANDS (TIDAL) — Areas known as marshes, swamps or other lowland subject to tidal action or any area now or formerly connected to tidal waters, whose surface is at or below an elevation of one foot above local extreme high water and of which vegetation unique to tidal marshes, swamps or lowlands has become adapted. This definition shall include, but is not limited to, all the mapped New Jersey State wetlands.

WINDOW SIGN — A sign which is part of or affixed or attached to the interior or exterior of a window or otherwise part of a window and located within 18 inches of the interior of the window and which can be seen from a public street or public parking facility.

WIRELESS TELECOMMUNICATIONS TOWER — Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carriers' towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto. **[Added 10-26-2005 by Ord. No. 17-2005]**

WOODED AREA — Any area within a tract covered by trees, woods or forests, including closely grouped or stands of 10 or more mature or specimen trees of six-inch caliper or greater; or individual shade and specimen trees of twelve-inch caliper or greater, or individual ornamental trees of four-inch caliper or greater.

WORK or DISTURBANCE — Includes, but is not limited to, any construction, building, improvement or development, whether or not a building or other permit is required, the removal or destruction of trees, shrubs or other vegetation, soil disturbance, or any other act or action that may have a detrimental impact on slope areas.

YARD — The space which lies between a building or structure and a lot line. A yard is to be unoccupied and unobstructed from the ground upward except as herein permitted. Yards will be identified as either front yard, side yard, or rear yard.

YARD, FRONT — A yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of a building or structure. The depth of the front yard shall be measured at right angles to the front line of the lot.

YARD, REAR — A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of a building or structure. The depth of a rear yard shall be measured at right angles to the rear of the lot in the same manner as specified herein for the measurement of lot depth.

YARD, SIDE — A yard between the sideline of the lot and the nearest line of a building or structure and extending from the front yard to the rear yard, or, in the absence of either of such yards, to the front or rear lot lines as the case may be. The width of a side yard shall be measured at right angles to the sideline of the lot.

ZONE — The same as "district"; includes the word "district."

ZONING OFFICER — The municipal official designated to enforce the provisions of this chapter.

ZONING PERMIT — The same as "development permit."

ARTICLE III
Administration

§ 150-7. Planning Board.

A. Establishment.

- (1) The Planning Board presently in existence pursuant to N.J.S.A. 40:55D-23 is hereby continued to consist of nine members of the following four classes and four alternates. All members of the Planning Board, except for the Class II members set forth below, shall be municipal residents. **[Amended 1-20-2001 by Ord. No. 2-2001]**¹⁸⁴
 - (a) Class I: the Mayor, or the Mayor's designee in the absence of the Mayor.
 - (b) Class II: one of the officials of the Borough, other than the Mayor or a member of the Borough Council, to be appointed by the Mayor, provided that if there is an Environmental Commission, the member of the Environmental Commission who is also a member of the Planning Board as required by N.J.S.A. 40:56A-1 shall be deemed to be the Class II Planning Board member if there is a member of the Board of Education among the Class IV members or alternate members.
 - (c) Class III: a member of the Borough Council to be appointed by it.
 - (d) Class IV: six other citizens of the Borough to be appointed by the Mayor. The members of Class IV shall hold no other municipal office, position or employment, except that one member may be a member of the Historic Preservation Commission, if there be an Historic Preservation Commission, and one may be a member of either the Atlantic Highlands Board of Education or the Henry Hudson Regional School Board of Education. A member of the Environmental Commission who is also a member of the Planning Board as required by N.J.S.A. 40:56A-1 shall be a Class IV Planning Board member unless there be among the Class IV or alternate members of the Planning Board a member of the Historic Preservation Commission and a member of the Board of Education, in which case the member of the Environmental Commission shall be deemed to be the Class II member of the Planning Board. For the purpose of this section, membership on a municipal board or commission whose function is advisory in nature, and the establishment of which is discretionary and not required by statute, shall not be considered the holding of municipal office.
- (2) Alternates. The Mayor may also appoint up to four alternates who shall be qualified, designated, and for the terms as specified in N.J.S.A 40:55D-23.1. **[Amended 1-20-2001 by Ord. No. 2-2001]**

B. Terms.

- (1) The term of the member composing Class I shall correspond to his official tenure. If the member is the Mayor's designee in the absence of the Mayor, the designee shall serve at the pleasure of the Mayor during the Mayor's official tenure. The terms of the members composing Class II and Class III shall be for one year or terminate at the completion of their respective terms of office, whichever occurs first, except for a Class II member who is also a member of the Environmental Commission. The term of a Class II or a Class IV member who is also a member of the

184. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Environmental Commission shall be for three years or terminate at the completion of his term of office as a member of the Environmental Commission, whichever comes first.¹⁸⁵

- (2) The term of a Class IV member who is also a member of the Board of Education shall terminate whenever he is no longer a member of such other body or at the completion of his Class IV term, whichever occurs first.
 - (3) The terms of all Class IV members first appointed pursuant to N.J.S.A. 40:55D-23 shall be so determined that to the greatest practicable extent the expiration of such term shall be evenly distributed over the first four years after their appointment as determined by resolution of the Borough Council; provided, however, that no term of any member shall exceed four years and further provided that nothing herein shall affect the term of any present member of the Planning Board, all of whom shall continue in office until the completion of the term for which they were appointed. Thereafter, all Class IV members shall be appointed for terms of four years, except as otherwise herein provided. All terms shall run from January 1 of the year in which the appointment was made.
 - (4) In the event that a choice must be made as to which alternate member is to vote, the lowest numbered alternate member(s) shall vote. **[Amended 1-20-2001 by Ord. No. 2-2001]**
- C. Conflicts. No member or alternate member of the Planning Board shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest.
- D. Vacancies. If a vacancy of any class shall occur otherwise than by expiration of term, it shall be filled by appointment, as above provided, for the unexpired term only.
- E. Removal. Any member other than a Class I member, after a public hearing if he requests one, may be removed by the Borough Council for cause.
- F. Organization of Board. The Planning Board shall elect a Chairman and Vice Chairman from the members of Class IV and select a Secretary who may be either a member of the Planning Board or a municipal employee designated by it.
- G. Planning Board Attorney. There is hereby created the office of Planning Board Attorney. The Planning Board may annually appoint, fix the compensation of or agree upon the rate of compensation of the Planning Board Attorney who shall be an attorney other than the Borough Attorney. The Board shall not expend an amount, exclusive of gifts or grants, in excess of the amount appropriated by the Council for its use.
- H. Expenses, experts and staff. The Borough Council shall make provisions in its budget and appropriate funds for the expenses of the Planning Board. The Planning Board may employ or contract for the services of experts and other staff and services as it may deem necessary. The Planning Board shall not, however, exceed, exclusive gifts or grants, the amount appropriated by the Borough Council for its use.
- I. Powers and duties. The Planning Board shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this chapter. In the issuance of subpoenas, administration of oaths and taking of testimony, the provisions of the County and Municipal Investigations Law of 1953 (N.J.S.A. 2A:67A-1 et seq.) shall apply. The Planning Board shall have the following powers and duties:

185.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (1) To prepare, and after public hearing, adopt or amend a master plan or component parts thereof, to guide the use of lands within the Borough in a manner which protects public health and safety and promotes the general welfare, in accordance with the provisions of N.J.S.A. 40:55D-28.
- (2) To administer site plan and land subdivision review in accordance with the provisions of this chapter and N.J.S.A. 40:55D-37 through 40:55D-59.
- (3) To grant exceptions from certain requirements for subdivision and site plan approval pursuant to N.J.S.A. 40:55D-51.
- (4) To approve conditional use applications in accordance with the provisions of this chapter and pursuant to N.J.S.A. 40:55D-67.
- (5) To consider and make report to the Borough Council within 35 days after referral as to any proposed development regulation submitted to it pursuant to the provisions of N.J.S.A. 40:55D-26(a). The report shall include identification of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the Master Plan and recommendations concerning these inconsistencies and any other matters as the Board deems appropriate. The Borough Council, when considering the adoption of a development regulation, revision or amendment thereto, shall review the report of the Planning Board and may disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following such recommendation. Failure of the Planning Board to transmit its report within the thirty-five-day period provided herein shall relieve the Borough Council from the requirements of this subsection in regard to the proposed development regulation, revision or amendment thereto referred to the Planning Board. Nothing in this section shall be construed as diminishing the application of the provisions of N.J.S.A. 40:55D-32 to any official map or an amendment or revision thereto or of N.J.S.A. 40:55D-62 to any zoning ordinance or any amendment or revision thereto.
- (6) To participate in the preparation and review of programs or plans required by state or federal law or regulations.
- (7) To assemble data on a continuing basis as part of a continuing planning process.
- (8) To annually prepare a program of municipal capital improvement projects over a term of six years, and amendments thereto, and recommend same to the Borough Council pursuant to the provisions of N.J.S.A. 40:55D-29.
- (9) When reviewing applications for approval of subdivision plats, site plans or conditional uses, to grant: **[Amended 5-14-2014 by Ord. No. 07-2014]**
 - (a) Variances pursuant to N.J.S.A. 40:55D-70(c).
 - (b) Direction pursuant to N.J.S.A. 40:55D-34 for issuance of permit for building or structure in the bed of a mapped street or public drainageway, flood control basin or public area reserved pursuant to N.J.S.A. 40:55D-32.
 - (c) Direction pursuant to N.J.S.A. 40:55D-36 for issuance of a permit for a building or structure not related to a street.
 - (d) Waiver of site plan approval where the Planning Board finds that the application does not involve or require improvements that affect the chapter standards or requirements relating to:

- [1] Preservation of existing natural resources on the site;
 - [2] Safe and efficient vehicular and pedestrian circulation, parking and loading;
 - [3] Screening, landscaping and location of structures;
 - [4] Exterior lighting needed for safety reasons in addition to any requirements for streetlighting;
 - [5] Conservation of energy and use of renewable energy resources;
 - [6] Recycling of designated recyclable materials.
- (e) Whenever relief is requested pursuant to this subsection, notice of a hearing on the application for development shall include reference to the request for a variance, waiver or direction for issuance of a permit as the case may be.
- (10) Review of capital projects pursuant to N.J.S.A. 40:55D-31.
- (11) To perform such other advisory duties as are assigned to it by ordinance or resolution of the Borough Council for the aid and assistance of the Borough Council or other Borough bodies, agencies, or officers.
- (12) The Borough Council may, by ordinance, provide for the reference of any matters or class of matters to the Planning Board before final action thereon by a municipal body or municipal officer having final authority hereon. Whenever the Planning Board shall have made a recommendation regarding a matter authorized by ordinance to another municipal body, such recommendation may be rejected only by a majority of the full authorized membership of such other body.
- J. Citizens Advisory Council. The Mayor may appoint one or more persons as a Citizen Advisory Council to assist or collaborate with the Planning Board in its duties, but such person or persons shall have no power to vote or take other action required by the Board. Such person or persons shall serve at the pleasure of the Mayor.
- K. Environmental Commission. The Mayor may appoint an Environmental Commission. Whenever the Environmental Commission has prepared and submitted to the Planning Board an index of the natural resources of the municipality, the Planning Board shall make available to the Environmental Commission an informational copy of every application for development to the Planning Board. Failure of the Planning Board to make such informational copy available to the Environmental Commission shall not invalidate any hearing or proceeding.
- L. Simultaneous review. The Planning Board shall have the power to review and approve or deny conditional uses or site plans simultaneously with review for subdivision approval without the developer being required to make further application to the Planning Board, or the Planning Board being required to hold further hearings. The longest time period for action by the Planning Board, whether it be for subdivision, conditional use or site plan approval, shall apply. Whenever approval of a conditional use is requested by the developer, notice of the hearing on the plat shall include reference to the request for such conditional use.

§ 150-8. Planning Board to act as Board of Adjustment.

- A. Authorization. Pursuant to N.J.S.A. 40:55D-25(c), the Planning Board is hereinafter empowered to

exercise all the powers and authority of a Board of Adjustment as set forth in the Municipal Land Use Law,¹⁸⁶ but the Class I and the Class III members shall not participate in the consideration of applications for development which involve relief pursuant to N.J.S.A. 40:55D-70(d).

B. Additional powers of the Planning Board.

(1) The Planning Board shall have the power to:

- (a) Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in the enforcement of the provisions of this chapter adopted pursuant to N.J.S.A. 40:55D-62 through 40:55D-68.

[1] Appeals to the Planning Board. Each appeal shall be taken within the 20 days prescribed by N.J.S.A. 40:55D-72 by filing a notice of appeal with the officer from whom the appeal was taken, together with three copies of said notice with the Secretary of the Planning Board. Said notice of appeal shall specify the grounds for said appeal; the officer from whom the appeal is taken shall immediately transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

[2] An appeal stays all proceedings in furtherance of the action in respect of which the decision appealed from was made, unless the officer from whom the appeal is taken certifies to the Planning Board after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Planning Board or by the Superior Court of New Jersey on application or notice to the officer from whom the appeal is taken and on due cause shown.

[3] The Planning Board may, in conformity with the provisions of N.J.S.A. 40:55D-1 et seq., reverse or affirm wholly or partly or may modify the order, requirement, decision or determination appealed from, and make such other requirement, decision or determination as ought to be made, and to that end have all the powers of the Administrative Officer from whom the appeal was taken.

- (b) Hear and decide requests for interpretation of the Zoning Map¹⁸⁷ or zoning provisions of this chapter adopted pursuant to N.J.S.A. 40:55D-62 through 40:55D-68, or for decisions upon other special questions upon which such Board is authorized by this chapter to pass.

- (c) Grant, upon an application or an appeal, relief from regulations pursuant to N.J.S.A. 40:55D-62 through 40:55D-68, except those departures enumerated in N.J.S.A. 40:55D-70d, where:

[1] The strict application of such regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of a property for any of the following reasons:

[a] By reason of exceptional narrowness, shallowness or shape of the specific piece

¹⁸⁶.Editor's Note: See N.J.S.A. 40:55D-1 et seq.

¹⁸⁷.Editor's Note: The Zoning Map is on file in the Borough offices.

of property; or

- [b] By reasons of exceptional topographic conditions or physical features uniquely affecting the specific piece of property; or
- [c] By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon; or
- [2] The purposes of N.J.S.A. 40:55D-1 et seq. would be advanced by a deviation from the requirements of this chapter and the benefits of the deviation would substantially outweigh any detriment.
- (d) Grant, upon an application or an appeal, in particular cases and for special reasons, by affirmative vote of at least five members, a variance to allow departures from regulations pursuant to N.J.S.A. 40:55D-62 through 40:55D-68 to permit the following:
 - [1] A use or principal structure in a district restricted against such use or principal structure;
 - [2] An expansion of a nonconforming use;
 - [3] Deviation from a specification or standard pertaining solely to a conditional use;
 - [4] An increase in the permitted floor area ratio;
 - [5] An increase in the permitted density, except as applied to the required lot area for a lot or lots for detached one- or two-dwelling-unit buildings which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision;
 - [6] A height of a principal structure which exceeds by 10 feet or 10% the maximum height permitted in the district for a principal structure.

If an application for development requests one or more variances but not a variance for a purpose enumerated in Subsection B(1)(d) above, the decision on the requested variance or variances shall be rendered under Subsection B(1)(c) of this section.

No variance or other relief may be granted under the terms of N.J.S.A. 40:55D-70d unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and this chapter. An application under this section may be referred to any appropriate person or agency, provided such reference shall not extend the period of time within which the Planning Board shall act.

- (2) The Planning Board shall have the power to grant to the same extent and subject to the same restrictions as the Planning Board subdivision or site plan approval pursuant to N.J.S.A. 40:55D-37 through 40:55D-59 or conditional use approval pursuant to N.J.S.A. 40:55D-67 whenever the proposed development requires approval by the Planning Board of a variance pursuant to N.J.S.A. 40:55D-70d. The developer may elect to submit a separate application requesting approval of the variance and a subsequent application for any required approval of a

subdivision, site plan or conditional use. The separate approval of the variance shall be conditioned upon grant of all required subsequent approvals by the Planning Board. No such subsequent approval shall be granted unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning regulations. The number of votes of the Board members required to grant any such subsequent approval shall be as otherwise provided in N.J.S.A. 40:55D-1 et seq. for the approval in question, and the special vote pursuant to the aforesaid Subsection d of N.J.S.A. 40:55D-70 shall not be required.

- (3) The Planning Board shall have the power to direct issuance of a permit pursuant to N.J.S.A. 40:55D-34 for a building or structure in the bed of a mapped street or public drainageway, flood control basin or public area reserved on the Official Map.
 - (4) The Planning Board shall have the power to direct issuance of a permit pursuant to N.J.S.A. 40:55D-36 for a building or structure not related to a street.
- C. Report to Borough Council. The Planning Board shall, at least once a year, review its decision on applications and appeals for variances and prepare and adopt by resolution a report on its findings on the provisions of this chapter which were the subject of variance requests and its recommendations for amendment or revision of this chapter, if any. The Planning Board shall send copies of the report and resolution to the Borough Council.
- D. Appeals from Planning Board to governing body. Any interested party may appeal to the governing body any final decision of the Planning Board approving an application for development pursuant to N.J.S.A. 40:55D-70(d). Such appeal shall be made within 10 days of the date of publication of such final decision pursuant to N.J.S.A. 40:55D-10(i). The appeal shall be made in accordance with the procedure set forth in N.J.S.A. 40:55D-17.

§ 150-9. General Planning Board provisions.

A. Meetings.

- (1) The Planning Board shall by its rules fix the time and place for holding its regular meetings. Regular meetings shall be scheduled not less than once a month and shall be held as scheduled unless cancelled for lack of applications for development to process.
- (2) The Planning Board may provide for special meetings, at the call of the Chairman, or in his absence by the Vice Chairman, or on the request of any two of its members, which shall be held on notice to its members and the public in accordance with municipal regulations and N.J.S.A. 10:4-6 et seq.
- (3) No action shall be taken at any meeting without a quorum being present.
- (4) All action shall be taken by a majority vote of members present at the meeting except as otherwise required by N.J.S.A. 40:55D-32, 40:55D-34, 40:55D-62, 40:55D-63, 40:55D-17e, 40:55D-26a and b and 40:55D-70d. Failure of a motion to receive the number of votes required to approve an application for development shall be deemed an action denying the application. Nothing herein shall be construed to contravene any act providing for procedures for governing bodies.
- (5) All regular meetings and all special meetings shall be open to the public. Notice of all such meetings shall be given in accordance with the requirements of the Open Public Meeting Law,

N.J.S.A. 10:4-6 et seq.

- (6) An executive session for the purpose of discussing and studying any matters to come before the agency shall not be deemed a regular or special meeting within the meaning of N.J.S.A. 40:55D-1 et seq.
- B. Minutes. Minutes of every regular or special meeting shall be kept and shall include the names of the persons appearing and addressing the Planning Board and of the persons appearing by attorney, the action taken by the Planning Board, the findings, if any, made by it and reasons therefor. The minutes shall thereafter be made available for public inspection during normal business hours at the office of the Planning Board Secretary. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceedings concerning the subject matter of such minutes. Such interested party may be charged a reasonable fee for reproduction of the minutes in an amount sufficient to cover the cost of such reproduction of the minutes for his use.
- C. Hearings.
- (1) Required hearings. The Planning Board shall hold a hearing on each application for development.
 - (2) Rules for conducting hearings. The Planning Board shall make rules governing the conduct of hearings before such bodies which rules shall not be inconsistent with the provisions of N.J.S.A. 40:55D-1 et seq. or this chapter.
 - (3) Filing of documents. Any maps and documents for which approval is sought at a hearing shall be on file and available for public inspection at least 10 days before the date of the hearing during normal business hours in the office of the Planning Board Secretary. The applicant may produce other documents, records or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.
 - (4) Oaths. The officer presiding at the hearing or such person as he may designate shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, and the provisions of the County and Municipal Investigations Law, N.J.S.A. 2A:67A-1 et seq., shall apply.
 - (5) Testimony. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer and the right of cross examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witness.
 - (6) Evidence. Technical rules of evidence shall not be applicable to the hearing, but the Board may exclude irrelevant, immaterial or unduly repetitious evidence.
 - (7) Verbatim recording. The Planning Board shall provide for the verbatim recording of the proceedings by either a stenographer or by mechanical or electronic means. The Planning Board shall furnish a transcript or duplicate recording in lieu thereof, on request to any interested party at his expense, provided that the Borough Council may provide by ordinance for the municipality to assume the expense of any transcripts necessary for approval to the Borough Council pursuant to N.J.S.A. 40:55D-17 of decisions by the Planning Board pursuant to N.J.S.A. 40:55D-70d, up to a maximum amount as specified by these regulations.

- (8) Transcript charge. The Planning Board in furnishing a transcript of the proceeding to an interested party at his expense shall not charge such interested party more than the maximum permitted in N.J.S.A. 2A:11-15, as amended.¹⁸⁸ Said transcript shall be certified in writing by the transcriber to be accurate.
 - (9) Voting eligibility. A member or alternate member who was absent for one or more of the meetings at which a hearing was held shall be eligible to vote on the matter upon which the hearing was conducted, notwithstanding his or her absence from one or more of the meetings; provided, however, that such Board member or alternate member has available to him or her the transcript or recordings of all of the hearing from which he or she was absent, and certifies in writing to the Planning Board that he or she has read such transcript or listened to such recording. This shall not be construed to authorize any hearing to be held whenever less than a quorum is present.
- D. Notice requirements for hearing. Whenever public notice of a hearing is required on an application for development, the applicant shall give notice thereof at least 10 days prior to the date of the hearing in accordance with the following:
- (1) Public notice of a hearing on an application for development shall be given for all of the following:
 - (a) Appeal or variance pursuant to N.J.S.A. 40:55D-70.
 - (b) Directive for issuance of a building permit pursuant to N.J.S.A. 40:55D-34 or 40:55D-36.
 - (c) Conditional uses pursuant to N.J.S.A. 40:55D-67.
 - (d) Preliminary major subdivision plats.
 - (e) Preliminary major site plans.
 - (f) Waiver of site plan approval. **[Added 5-14-2014 by Ord. No. 07-2014]**
 - (2) Public notice shall be given by publication in the official newspaper of the Borough, if there be one, or in a newspaper of general circulation in the Borough.
 - (3) Notice of a hearing requiring public notice shall be given to the owners of all real property as shown on the current tax duplicate or duplicates located within 200 feet in all directions of the property which is the subject of such hearing, provided that this requirement shall be deemed satisfied by notice to the 1) condominium association, in the case of any unit owner whose unit has a unit above or below it; or 2) horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it. Notice shall be given by serving a copy thereof on the owner as shown on the said current tax duplicate or his agent in charge of the property, or mailing a copy thereof by certified mail to the property owner at his address as shown on the said current tax duplicate. A return receipt is not required. Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, a vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within 200 feet of the property which is the subject of the hearing, may be made in the same manner as to a corporation without further notice to unit

188. Editor's Note: N.J.S.A. 2A:11-15 was repealed by L. 1991, c. 119, § 4, effective 4-25-1991.

owners, co-owners, or homeowners on account of such common elements or areas. Notice of a hearing requiring public notice pursuant to Subsection D(1), above, shall be given to public utilities and cable television companies in accordance with Subsection D(8).

- (4) Notice of all hearings on applications for development involving property located within 200 feet of an adjoining municipality shall be given by personal service or certified mail to the Clerk of such municipality, which notice shall be in addition to the notice required to be given to the owners of lands in such adjoining municipality which are located within 200 feet of the subject premises.
- (5) Notice shall be given by personal service or certified mail to the County Planning Board of a hearing on all applications for development of property adjacent to an existing county road or proposed road shown on the official county map or on the county master plan, adjoining other county land or situated within 200 feet of a municipal boundary.
- (6) Notice shall be given by personal service or certified mail to the Commissioner of the New Jersey Department of Transportation of a hearing on any application for development of property adjacent to a state highway.
- (7) Notice of hearings on all applications for approval of a major subdivision or a site plan not defined as a minor site plan in this chapter, requiring public notice pursuant to Subsection D(1), above, shall be given by personal service or certified mail to the corporate secretary of all public utilities and the general manager of all cable television companies that own land or any facility or that possess a right-of-way or easement situated within 200 feet in all directions of the property which is the subject of such hearing. In addition to any notification requirement otherwise imposed under this chapter, an applicant seeking approval of a development which does not require notice as provided above shall be required to provide notice, by personal service or certified mail, to the corporate secretary of any public utility and the general manager of any cable television company that possesses a right-of-way or easement situated within the property limits of the property which is the subject of the application for development approval under this section.
- (8) Any notice made by certified mail as hereinabove required shall be deemed to be complete upon mailing in accordance with the provisions of N.J.S.A. 40:55D-14.
- (9) Form of notice. All notices required to be given pursuant to the terms of this chapter shall state the date, time and place of the hearing, the nature of the matters to be considered and identification of the property proposed for development by street address, if any, and by reference to lot and block numbers as shown on the current tax duplicate in the Borough Tax Assessor's office and the location and times at which any maps and documents for which approval is sought are available for public inspection as required by law.
- (10) Notice pursuant to Subsection D(4), (5), (6) and (7) of this section shall not be deemed to be required, unless public notice pursuant to Subsection D(1) and (2) and notice pursuant to Subsection D(3) of this section are required.
- (11) List of property owners furnished. Upon the written request of an applicant, the Municipal Clerk shall, within seven days, make and certify a list from said current tax duplicates of names and addresses of owners to whom the applicant is required to give notice pursuant to this chapter. The applicant shall be entitled to rely upon the information contained in such list, and failure to give notice to any owner not on the list shall not invalidate any hearing or proceeding. A fee shall be charged for such list.

- E. Decisions. Each decision on any application for development shall be reduced to writing and shall include findings of facts and conclusions based thereon.
- (1) Reduction to writing shall be accomplished through:
 - (a) A resolution adopted at a meeting held within the applicable time period for taking action on the application for development; or
 - (b) A resolution adopted at a meeting held not later than 45 days after the date of the meeting at which action to grant or deny approval was taken memorializing said action.
 - (c) Where the Planning Board fails to adopt a resolution, any interested party may apply to Superior Court in a summary manner for an order compelling the agency to reduce its findings and conclusions to writing within a stated time and the cost of the application, including attorney's fees, shall be assessed against the municipality.
 - (2) The following members shall be eligible to vote on the resolution:
 - (a) Where the action taken resulted from the failure of a motion to approve an application, those members voting against the motion for approval shall be the members eligible to vote on the resolution.
 - (b) In all other circumstances, only the members who voted for the action taken shall be eligible to vote on the resolution.
 - (3) The following shall apply to adoption of the resolution:
 - (a) The vote on a resolution shall be deemed to be a memorialization of the action of the agency and not to be an action of the agency.
 - (b) The vote of a majority of those eligible members who are present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution.
 - (c) The date of the adoption of the resolution shall constitute the date of the decision for purposes of the mailings, filings, and publications required.
 - (4) Copies of the decision shall be distributed by the Planning Board Secretary as follows:
 - (a) A copy shall be mailed within 10 days of the date of decision to the applicant, or if represented then to his attorney, without separate charge.
 - (b) A copy shall be filed in the office of the Planning Board Secretary and be made available for public inspection during reasonable hours.
 - (c) A copy shall be made available to any interested party for a reasonable fee in an amount sufficient to cover the cost of such copy.
 - (5) A brief notice of the decision shall be published in the official newspaper(s) of the Borough.
 - (a) Such publication shall be arranged and proof of publication shall be obtained by the applicant. All costs for publication shall be paid by the applicant. Said notice shall be sent by the applicant within 10 days of the date of decision. Proof of publication shall be filed with the Planning Board within 20 days of the decision. In the event that proof of publication is not filed by the applicant within 20 days, the Secretary of the Planning Board shall have the right to publish said decision in the official newspaper and all costs for

publications shall be paid by the applicant. The period of time in which an appeal of the decision may be made shall run from the first publication of the notice whether arranged by the Borough or the applicant.

- (b) Such notice shall be published within 30 days of the date of decision, or 20 days of the date of mailing of a copy of the decision by the Planning Board Secretary, whichever is later, or within such other appropriate period as may be determined by the Planning Board at the time of decision.
- (c) Failure to publish as herein required shall render any approvals null and void.

F. Conditional approvals.

- (1) In the event that a developer submits an application for development proposing a development that is barred or prevented, directly or indirectly, by legal action instituted by any state agency, political subdivision or other party to protect the public health and welfare or by a directive or order issued by any state agency, political subdivision or court of competent jurisdiction to protect the public health and welfare, the Planning Board shall process such application for development in accordance with the provisions of N.J.S.A. 40:55D-1 et seq. and this chapter, and, if such application for development complies with the provisions of this chapter, the Planning Board shall approve such application conditioned on removal of such legal barrier to development.
- (2) In the event that development proposed by an application for development requires an approval of a governmental agency other than the Planning Board, the Planning Board shall, in appropriate instances, condition its approval upon the subsequent approval of such governmental agency, provided that the Planning Board shall make a decision on any application for development within the time period provided in this chapter and N.J.S.A. 40:55D-1 et seq. or within an extension of such period as has been agreed to by the applicant unless the Planning Board is prevented or relieved from so acting by the operation of law.
- (3) Whenever review or approval of the application by the County Planning Board is required by N.J.S.A. 40:27-6.3, in the case of a subdivision, or N.J.S.A. 40:27-6.6, in the case of a site plan, the Planning Board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required time period.
- (4) The Planning Board may impose such other conditions as it deems appropriate.
- (5) In all cases the Planning Board shall include a condition of approval setting forth the time within which all conditions of approval must be satisfied by the applicant. Failure of the applicant to meet all conditions of approval within the time specified or within such extensions thereof as the Planning Board may, from time to time, grant upon the request of the applicant shall render any approvals null and void.
- (6) Tolling of running of period of approval. In the event that, during the period of approval heretofore or hereafter granted to an application for development, the developer is barred or prevented, directly or indirectly, from proceeding with the development otherwise permitted under such approval by a legal action instituted by any state agency, political subdivision or other party to protect the public health and welfare or by a directive or order issued by any state agency, political subdivision or court of competent jurisdiction to protect the public health or welfare and the developer is otherwise ready, willing and able to proceed with said

development, the running of the period of approval shall be suspended for the period of time said legal action is pending or such directive or order is in effect.

- G. Payment of taxes. Pursuant to the provisions of N.J.S.A. 40:55D-39 and 40:55D-65, every application for development submitted to the Planning Board shall be accompanied by proof that no taxes or assessments for local improvements are due or delinquent on the property which is the subject of such application; or if it is shown that taxes or assessments are delinquent on said property, any approvals or other relief granted by the Planning Board shall be conditioned upon either the prompt payment of such taxes or assessments, or the making of adequate provision for the payment thereof in such manner that the municipality will be adequately protected.
- H. Time for decision. After the date an appeal is taken from the decision of a municipal officer or the submission of a complete application for development to the Administrative Officer, the Planning Board shall render its decision within the maximum number of days as specified below or within such further time as may be consented to by the applicant. Where more than one type of application is involved, the longer time period shall apply.

Type of Application	Time Period (days)
Site plans	
Minor	45
Preliminary approval (10 acres or less, 10 units or less)	45
Preliminary approval (more than 10 acres or 10 units)	95
Final approval	45
Subdivisions	
Minor	45
Preliminary approval (10 lots or less)	45
Preliminary approval (more than 10 lots)	95
Final approval	45
Conditional use authorization	95
Variance	120
Appeal from the decision of a municipal officer	120
Direction for issuance of a building permit	120

- I. Separation of applications. A developer whose proposed development requires a variance or direction of the issuance of a permit may elect to submit a separate application requesting the variance or direction of the issuance of a permit and a subsequent application for any required approval of a subdivision, site plan, or conditional use. The separate granting of the variance or direction of the issuance of a permit shall be conditioned upon the granting of all required subsequent approvals by the same approving authority. No such subsequent approval shall be granted unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan. The number of votes of the Board members required to grant any such subsequent approval shall be as otherwise provided for the approval in question, and any special vote shall not be required. In the event that the developer elects to submit separate consecutive

applications, the time period for granting or denying each separate application shall be as provided in Subsection H above.

- J. Time for exercise of variance. Any variance from the terms of any ordinance hereafter granted permitting the direction or alteration of any building, structure or structures, or permitting a specified use of any premises, shall expire by limitation, unless such construction or alteration shall have been actually commenced on each and every structure permitted by the variance, or unless such permitted use has actually been commenced, within 12 months from the date of entry of the decision; provided, however, that the running of the period of limitation herein provided shall be suspended from the date of filing an appeal from the decision to the Borough Council or to a court of competent jurisdiction until the termination in any manner of such appeal or proceeding. Where the variance is part of a subdivision or site plan approval, the period of limitation shall coincide with the approval specified in Article IV. If the original applicant, submits a written request to the approving agency not less than 30 days prior to the expiration of the original approval, the time limit set forth above may be extended by the approving agency, for good cause shown, for a period not to exceed two consecutive years, commencing on the original date of expiration. If such construction or alteration has not been actually commenced on each and every structure permitted by the variance, or such permitted use has not actually been commenced, within 24 months from the date of the commencement of the extension, the processing of a completely new application for approval will be required. Official notice of any extensions granted shall be published in two official newspapers of the municipality, within 15 days after the extension is approved. **[Amended 10-24-2012 by Ord. No. 13-2012]**

§ 150-10. Certificates and permits.

A. Development permit.

(1) Development permits shall hereafter be secured from the Zoning Officer prior to:

- (a) Application for and/or issuance of any building permit except for minor work or ordinary repairs as defined in the Uniform Construction Code;¹⁸⁹
- (b) The erection, construction, alteration, repair, remodeling, conversion, removal or destruction of any building or structure;
- (c) Application for and/or issuance of any permit for a new or expanded or relocated sign;
- (d) Application for and/or issuance of any permit for erection of a fence;
- (e) Any change in use or change in nonresidential occupancy;
- (f) The excavation, removal, or addition of soil or fill to or from any site exceeding 10 cubic yards or any alteration exceeding 5,000 square feet in the natural condition of any undeveloped parcel of land, including but not limited to the alteration of drainage patterns, removal of soil, regrading, and removal of trees and ground cover; provided, however, that such alterations located on and necessary to the operation of a farm as defined in this chapter shall not require a development permit;
- (g) Any use of any portion of any parcel of land for any activity regulated by this chapter;
- (h) The construction of any site improvement either above or below ground;

189. Editor's Note: See N.J.A.C. 5:23 and Ch. 136, Construction Codes, Uniform.

- (i) The issuance of any certificate of occupancy where no building permit was previously required.
- (2) An application for development permit shall be in writing by the owner or his authorized agent and include the following unless the Administrative Officer determines that a particular item is not needed in order to make a decision:
 - (a) A statement of the use or intended use or uses of the building, structure or land.
 - (b) An elevation drawn to scale of the building or structure to be erected including signs to be placed thereon and their content and manner of construction.
 - (c) A plan drawn to scale showing all proposed and/or existing buildings, signs, parking areas, setbacks, and yard distances in exact location to street and lot lines.
 - (d) The proportion of existing and proposed lot coverage.
 - (e) The location of any wetlands, easements, or floodplains.
- (3) The Zoning Officer shall take action on a complete application for a development permit within 45 days of its submission.
- (4) Prior to issuance of a development permit, the applicant shall have, where applicable, secured other required permits including, but not limited to:
 - (a) Access permit from the New Jersey Department of Transportation and/or Monmouth County Engineering Department.
 - (b) Drainage permits from the New Jersey Department of Transportation.
 - (c) Stream encroachment permit from the New Jersey Department of Environmental Protection.
 - (d) Coastal Area Facilities Review Act (CAFRA) permit from the New Jersey Department of Environmental Protection.
 - (e) Wetlands permit from the New Jersey Department of Environmental Protection.
 - (f) Riparian construction permit from the New Jersey Department of Environmental Protection.
 - (g) Waterfront development permit from the New Jersey Department of Environmental Protection.
 - (h) Required permits from the U.S. Army Corps of Engineers and U.S. Coast Guard.
 - (i) Sewerage and/or industrial waste treatment permit from the New Jersey Department of Environmental Protection.
 - (j) Land disturbance permit from the Freehold Area Soil Conservation District.
 - (k) Floodplain encroachment permit.
- (5) Prior to the issuance of a development permit, the applicant shall have secured all approvals required by this chapter and shall have met any and all conditions of any Planning Board approval.

B. Subdivision of land.

- (1) The prospective purchaser, prospective mortgagee, or any other person interested in any land which forms part of a subdivision, or which formed part of such a subdivision three years preceding the effective date of N.J.S.A. 40:55D-1 et seq., may apply in writing to the Administrative Officer for issuance of a certificate certifying whether or not such subdivision has been approved by the Planning Board. Such application shall contain a diagram showing the location and dimension of the land to be covered by the certificate and the name and the owner thereof.
- (2) The Administrative Officer shall make and issue such certificate within 15 days after the receipt of such written application and the fees therefor. Said officer shall keep a duplicate copy of each certificate, consecutively numbered, including a statement of the fee charged, in a binder as a permanent record of his office.
- (3) Each such certificate shall be designated as "certificate as to approval of subdivision of land," and shall certify:
 - (a) Whether there exists in the Borough a duly established Planning Board and whether there is an ordinance controlling subdivision of land adopted under the authority of N.J.S.A. 40:55D-1 et seq.
 - (b) Whether the subdivision, as it relates to the land shown in said application, has been approved by the Planning Board, and, if so, the date of such approval and any extensions and terms thereof, showing the subdivision of which the lands are a part is a validly existing subdivision.
 - (c) Whether such subdivision, if the same has not been approved, is statutorily exempt from the requirement of approval as provided by N.J.S.A. 40:55D-1 et seq.
- (4) The Administrative Officer shall be entitled to demand and receive for such certificate issued by him a reasonable fee in accordance with the fee schedule.
- (5) Any person who shall acquire for a valuable consideration an interest in the lands covered by such certificates of approval of a subdivision in reliance upon the information therein contained shall hold such interest free of any right, remedy or action which could be prosecuted or maintained by the Borough pursuant to the provisions of N.J.S.A. 40:55D-55.
- (6) If the Administrative Officer designated to issue any such certificate fails to issue the same within 15 days after receipt of an application and the fees therefor, any person acquiring an interest in the lands described in such application shall hold such interest free of any right, remedy or action which could be prosecuted or maintained by the Borough pursuant to N.J.S.A. 40:55D-55.
- (7) Any such application addressed to the Municipal Clerk shall be deemed to be addressed to the proper designated officer and the Borough shall be bound thereby to the same extent as though the same was addressed to the designated official.

C. Construction permit.

- (1) No construction permit shall be issued unless the applicant shall have first secured a zoning permit.

- (2) No building, structure or sidewalk, or curb ramps shall be erected, added to, or structurally altered until a permit thereon has been issued by the Construction Official. All applications for such permits shall be in accordance with the requirements of the New Jersey State Uniform Construction Code. (N.J.A.C. 5:23-2.14)¹⁹⁰

D. Certificate of occupancy.

- (1) Development permit required. No certificate of occupancy shall be issued for the use of any building, structure or land unless a development permit shall have first been issued for the use of such building, structure, or land.
- (2) Uses and occupancies after the effective date of this chapter. **[Amended 9-13-2006 by Ord. No. 15-2006]**
 - (a) No building, structure or land shall be occupied or used until such time as a certificate of occupancy is issued by the Code Enforcement Officer.
 - (b) Such certificates shall be issued upon application by the owner, prospective occupant, or purchaser only after the Code Enforcement Officer determines that the facts represented on the application are correct and that the building, structure or use is in conformance with the provisions of the Uniform Construction Code¹⁹¹ and other codes and ordinances affecting construction and occupancy.
 - (c) A temporary certificate of occupancy may be issued pursuant to the provisions of this chapter for any structure or use for which site plan approval has been secured, but not all conditions of approval have been complied with.
- (3) Existing uses at the time of passage of this chapter or any amendments thereto. The prospective purchaser, prospective mortgagee, or any other person interested in any land or structure may apply in writing for the issuance of a certificate certifying that the use or structure legally existed before the adoption of the chapter or the amendment and certifying the extent and kind of use. The applicant shall have the burden of proof. Application pursuant hereto shall be made to the Borough Administrator within one year of the adoption of the chapter or the amendment or at any time to the Planning Board and shall be accompanied by the established fee. A denial by the Borough Administrator shall be appealable to the Planning Board pursuant to N.J.S.A. 40:55D-72 et seq.
- (4) Change of occupancy. Whenever there occurs a change in the occupancy or use of any building, structure or land, a new certificate of occupancy shall be applied for, to ensure compliance with all applicable codes and ordinances. The Zoning Officer may issue such certificate if the Administrative Officer determines such change in occupancy is not a change in use as defined in § 150-6 of this chapter and that the applicant has met the requirements of the applicable regulations.
- (5) Scope of certificate of occupancy. The certificate of occupancy shall contain sufficient information as to the extent and kind of use or uses, such that any future investigation of the premises would disclose the extent to which a use was altered. It shall also indicate whether such use is a permitted or nonconforming use and the extent to which the use does not conform to the provisions of this chapter.

190.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

191.Editor's Note: See N.J.A.C. 5:23 and Ch. 136, Construction Codes, Uniform.

- (6) Improvement required. No permanent certificate of occupancy shall be issued until all required improvements have been installed in accordance with the provisions of this chapter. A temporary certificate of occupancy may be issued to permit occupancy for a period not to exceed 180 days. If at the end of that period the required improvements have not been completed, the occupancy permit becomes null and void and the owner may be subject to the penalties herein defined by this chapter.
- E. Soil erosion and sediment control plan. Where required, a soil erosion and sediment control plan certification shall be obtained from the Freehold Area Soil Conservation District prior to subdivision or the erection of any structure or the alteration of the existing grade on any lot. No such certification shall be valid until a development permit shall have first been issued for the subdivision, building, structure or use.

§ 150-11. Records.

- A. It shall be the duty of the Administrative Officer (Planning Board and Zoning Officer) or his designee to keep a record of all applications, all actions of the municipal agencies, all complaints, all violations noted and a record or any action taken thereon and all development permits issued together with a notation of all special conditions involved. He shall file and safely keep all copies of all plans submitted, and the same shall form a part of the records of his office and shall be available for the use of the Borough Council and of other officials of the Borough.
- B. The Administrative Officer (Zoning Officer) or his designee shall prepare a monthly report for the Borough Council, summarizing for a period since his last previous report all development permits issued and all complaints of violations and the action taken by him consequent thereon. A copy of each such report shall be filed with the Borough Administrator, Tax Assessor, Planning Board, Code Enforcement Officer, Construction Official and Engineer at the same time it is filed with the Borough Council.

§ 150-12. Enforcement.

The duty of administering and enforcing the provisions of this chapter is hereby conferred upon the Zoning Officer, who shall have such powers as are conferred by this chapter, and as reasonable may be implied. In no case shall a development permit be granted for a subdivision or the construction of or alteration of any building or site where the proposed construction, alteration or use thereof would be in violation of any provisions of this chapter. It shall be the duty of the Administrative Officer or his designee to cause any building, plans or premises to be inspected or examined and to order in writing the remedying of any conditions found to exist in violation of this chapter, and the Officer shall have the right to enter any buildings or premises during the daytime, or other normal business hours of the premises, in the course of performing these duties.

§ 150-13. Interpretation.

In the application and interpretation of these regulations, all provisions hereof shall be held to be minimum standards or requirements adopted for the promotion of the public health, safety, convenience, and general welfare of the Borough. Whenever the requirements of these regulations are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive of those imposing the higher standard shall govern.

§ 150-14. Conflict with other laws; repealer.

Chapter 146, Zoning, Chapter 120, Subdivision of Land, and Chapter 69, Land Use Procedures, from the Code of the Borough of Atlantic Highlands, are hereby repealed in their entirety and any portions of other ordinances which contain provisions inconsistent with these regulations are hereby repealed to the extent of such inconsistency, except as provided, and, except that any building permit, variance, conditional use permit, occupancy permit or other permit validly issued pursuant to any such ordinance shall remain valid and effective and shall continue to be governed by the terms and conditions of such ordinance.

§ 150-15. Violations and penalties.

- A. For a violation of any provision of these regulations, unless a specific penalty is otherwise provided in connection with the regulation violated, the maximum penalty upon conviction of the violation shall be as provided in Chapter 1, Article II, General Penalty. Each day a violation occurs shall constitute a separate offense. **[Amended 6-24-1998 by Ord. No. 14-98]**¹⁹²
- B. Violations enumerated.
- (1) It shall be a violation of the provisions of these regulations to:
 - (a) Engage in any of the activities referred to in Article III, § 150-10A, prior to issuance of a development permit.
 - (b) Engage in any of the activities referred to in Article V, § 150-30C, D and E.
 - (c) Engage in any of the activities referred to in Article VII, § 150-49A, B and C, prior to issuance of a development permit.
 - (d) After approval of a development permit, fail to follow, during construction, the approved site or subdivision plans and/or observe any and all conditions of approval contained in any resolution of the Planning Board.
 - (e) Fail to observe the provisions of Article VII.
 - (f) Fail to observe any direction of the Administrative Officer or his designee with regard to the suspension of any work not in conformance with approved plans or the conditions of any resolution of the Planning Board or of the development permit.
 - (g) Fail to observe any direction of the Administrative Officer or his designee with regard to the correction, including any time limits imposed for such correction, of any work not in conformance with the approved plans or the conditions of any resolution of the Planning Board or of the development permit.
 - (h) After completion of a development, fail to operate and maintain the site in conformance with the approved plans, any condition of a resolution of the Planning Board or of the development permit and/or any of the provisions or applicable design standards set forth in Articles VII, VIII, and IX of these regulations.
 - (2) The above shall not be construed to be an exhaustive list of those activities or actions or omissions which constitute violations of these regulations. Engaging in other activities prohibited by, or failure to engage in other activities required by, these regulations shall also be

192.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

considered violations.

C. Sale or transfer land in subdivision prior to approval.

- (1) If, before final subdivision approval has been granted, any person transfers or sells or agrees to transfer or sell, except pursuant to an agreement expressly conditioned on final subdivision approval, as owner or agent, any land which forms a part of a subdivision for which municipal approval is required by this chapter pursuant to N.J.S.A. 40:55D-1 et seq., such person shall be subject to a penalty not to exceed \$1,000 and each lot so made may be deemed a separate violation.
- (2) In addition to the foregoing, the municipality may institute and maintain a civil action:
 - (a) For injunctive relief; and
 - (b) To set aside and invalidate any conveyance made pursuant to such a contract of sale provided a certificate as to the approval of subdivision has not been issued in accordance with this chapter.
- (3) In any such action, the transferee, purchaser or grantee shall be entitled to a lien upon the portion of the land from which the subdivision was made that remains in the possession of the developer or his assigns or successors, to secure the return of any deposits made or purchase price paid, and also, a reasonable search fee, survey expense and title closing expense, if any. Any such action must be brought within two years after the date of the recording of the instrument of transfer, sale or conveyance of said land or within six years, if unrecorded.

D. If, after final approval, it is discovered that there was any misrepresentation of any statements or proofs contained in any plat or in any application for approval or in any representations made to induce approval, the Planning Board or the Borough Council may, in addition to such other sanctions as are available in the law, revoke the approval of any plat and proceed as if final approval had not been obtained.

E. If the developer or agent of the developer shall, after notification by certified mail from the Zoning Officer or Borough Engineer to cease the construction of improvements, cease the use of certain construction methods and procedures, or cease the use of or lack of use of site maintenance methods and procedures which may result in hazards to life, health or property; continue to carry on the activities specifically included in cessation order(s) from the Zoning Officer or Borough Engineer; then any such developer or agent of such developer shall be subject to a penalty as provided in Chapter 1, Article II, General Penalty. Each and every day that a developer or agent of a developer operates in violation of this chapter after issuance of a cessation order shall be considered a separate and specific violation.¹⁹³

§ 150-16. Amendments.

All amendments to this chapter and to the Zoning Map,¹⁹⁴ which forms a part hereof, shall be adopted in accordance with the provisions of N.J.S.A. 40:55D-1 et seq., as amended and supplemented. The map and schedule of area, yard and building requirements may be amended and supplemented by description and reference thereto, without republication of the entire map or detailed text of the schedule.

193.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

194.Editor's Note: The Zoning Map is on file in the Borough offices.

- A. Protest of amendments. A protest against any proposed amendment or revision of a zoning ordinance may be filed with the Municipal Clerk, signed by the owners of 20% or more of the area either: 1) of the lots or land included in such proposed change; or 2) of the lots or land extending 200 feet in all directions therefrom inclusive of street space, whether within or without the Borough. Such amendment or revision shall not become effective following the filing of such protest except by the favorable vote of 2/3 of all members of the governing body of the Borough.

§ 150-17. Effect on pending and new applications.

- A. Effect on new applications. After the effective date of this chapter, all new applications, and any pending applications which have not been approved, shall be subject to all the provisions of this chapter, except as provided by § 150-17B.
- B. Effect on pending applications.
- (1) If the provisions of this chapter cause there to be a change in the classification of a pending application or require additional variances or result in greater deviations from the standards for a pending variance application, the pending application shall be denied without prejudice. The applicant may submit a new application, subject to all the provisions of this chapter.
 - (2) If the provisions of this chapter require additional design exceptions or waivers or create greater deviations from standards for a pending design waiver or exception application, the pending application shall be denied without prejudice and the Administrative Officer shall so notify the applicant. However, the pending application may be continued, provided: i) the applicant submits within 30 days of the effective date of this chapter an amended application including a statement justifying the waivers or exceptions; and ii) the Board shall be required to act within 60 days of the effective date of this chapter or within the time limits originally applicable to the pending application, whichever is later.
 - (3) If the provisions of this chapter do not cause there to be a change in the classification of a pending application or require additional variances or result in greater deviations from the standards for a pending variance application or require additional design exceptions or waivers or create greater deviations from standards for a pending design waiver or exception application, the pending application may be continued subject to the provisions of the regulations in effect prior to the adoption of this chapter and to the time limits originally applicable to the pending application.
- C. All approvals granted after the effective date of this chapter shall confer upon the applicant all the rights set forth in this chapter.

§ 150-18. Copy to be filed with County Planning Board.

Upon adoption of this chapter, and any amendments, the Municipal Clerk shall file a copy with the Monmouth County Planning Board as required by N.J.S.A. 40:55D-16. Any zoning ordinance or amendment or revision which in whole or in part is inconsistent with or not designed to effectuate the Land Use Plan Element and Housing Plan Element of the Master Plan shall not take effect until a copy of the resolution required by N.J.S.A. 40:55D-62 shall be filed with the Monmouth County Planning Board.

§ 150-19. Escrow deposits and application fees.

- A. The Planning Board shall require, in addition to the normal application fees, escrow deposits in accordance with the provisions of this chapter. Such escrows shall be utilized to pay the costs of any

professional fees, including engineering, legal, planning and other expenses incurred for review of and/or testimony requested by a Board concerning an application for development submitted by an applicant.

- B. The amount of escrow deposit shall be reasonable in regard to the scale and complexity of the development. All payments charged to the deposit shall be pursuant to vouchers from the professionals stating the hours spent, the hourly rate and the expenses incurred. The Borough shall render a final written accounting to the developer on the uses to which the deposit was put. Thereafter the Borough shall, upon written request, provide copies of the vouchers to the developer. If salary, staff support and overhead for a professional are provided by the Borough, the charge to the deposit shall not exceed 200% of the sum of the products resulting from multiplying the hourly base salary of each of the professionals by the number of hours spent by the respective professional on review of the application for development or the developer's improvements, as the case may be. For other professionals the charge to deposit shall be at the same rate as all other work of the same nature by the professional for the Borough.
- C. Subject to the provisions of Subsection E(6) hereinbelow, each applicant shall, prior to the application being ruled complete pursuant to the provisions of the Municipal Land Use Law,¹⁹⁵ submit the following sum(s) as application fees and the following sum(s) to be held in escrow in accordance with the provisions hereof.
- D. Every application for development shall be accompanied by a check payable to Borough of Atlantic Highlands in accordance with the following schedules.
- E. The application fee is a flat fee to cover direct administrative expenses and is nonrefundable. Where one application for development includes several approval requests, the sum of the individual required fees shall be paid. Application fees for concept plans may be credited against any future formal applications submitted by the same developer for the same tract. If final total square footage is unknown, fees and escrows shall be based upon maximum floor area permitted under the Schedule of Zoning Requirements, Exhibit 5-2.¹⁹⁶ For site plans involving expansion, addition and modifications of existing buildings, per acre fee and escrow shall be waived and only the per square foot fee shall be charged. Fees for application for development permit, subdivisions, site plans and other submissions shall be as provided in Chapter 168, Article II. **[Amended 4-9-2003 by Ord. No. 2-2003; 2-23-2011 by Ord. No. 03-2011]**
 - (1) Written agreement. Each applicant for subdivision or site plan approval shall agree in writing to pay all reasonable costs for professional review of the application, including costs incurred with any informal review of a concept plan which may have preceded the submission of a preliminary application and any costs incurred as a result of special meetings required by the application as set forth in Subsection E(5).
 - (2) Transcript of hearings. If an applicant desires a court reporter, the cost of taking testimony and transcribing it and providing a copy of the transcript to the Borough shall be at the expense of the applicant who shall arrange for the reporter's attendance.
 - (3) Fee for inspection of constructed improvements. **[Amended 7-25-2018 by Ord. No. 09-2018]**
 - (a) Each applicant shall agree in writing to pay all reasonable costs for municipal inspection of the constructed improvements. The applicant shall post inspection fees in escrow with

¹⁹⁵Editor's Note: See N.J.S.A. 40:55D-1 et seq.

¹⁹⁶Editor's Note: Exhibit 5-2 is included as an attachment to this chapter.

the municipality in the following amount(s):

- [1] Except in extraordinary circumstances, the greater of \$500 or 5% of the cost of the bonded improvements that are subject to performance guarantees pursuant to Chapter 150, Article X, § 150-92; and
 - [2] Five percent of the cost of "private site improvements" that are not covered under Subsection E(3)(a)[1] of this section, which cost shall be determined in accordance with N.J.S.A. 40:55D-53.4.
- (b) For those developments for which the inspection fees total less than \$10,000, the fees may, at the option of the developer, be paid in two installments. The initial amount deposited in escrow by a developer shall be 50% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Municipal Engineer for inspections, the developer shall deposit the remaining 50% of the inspection fees.
 - (c) For those developments for which the inspection fees total \$10,000 or greater, the fees may, at the option of the developer, be paid in four installments. The initial amount deposited in escrow by a developer shall be 25% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Municipal Engineer for inspections, the developer shall make additional deposits of 25% of the inspection fees.
 - (d) If the municipality determines that the amount in escrow for the payment of inspection fees, as calculated pursuant to Subsection E(3)(a)[1] and [2] herein, is insufficient to cover the cost of additional required inspections, the developer shall deposit additional funds in escrow as may be required by the municipality, provided that the municipality delivers the developer a written inspection escrow deposit request signed by the Municipal Engineer, which:
 - [1] Informs the developer of the need for additional inspections; and
 - [2] Details the items or undertakings that require inspection; and
 - [3] Estimates the time required for those inspections; and
 - [4] Estimates the cost of performing those inspections.
 - (e) In the event that final approval is by stages or sections of development pursuant to N.J.S.A. 40:55D-38a, the provisions of this section shall be applied by stage or section.
 - (f) The Municipal Engineer shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit, nor shall the developer proceed with any work for which an inspection is required until sufficient funds are on deposit. All such costs for inspections must be paid before any construction permit is issued, and all remaining costs must be paid in full before any occupancy of the premises is permitted or the certificate of occupancy is issued.
 - (g) The cost of the installation of improvements shall be estimated by the Municipal Engineer based on documented construction costs for public improvements prevailing in the general area of the municipality pursuant to N.J.S.A. 40:55D-53.4.

- (h) The Municipal Chief Financial Officer shall deposit all fees for the inspection of constructed improvements in excess of \$5,000 in accordance with N.J.S.A. 40:55D-53.1. The inspection fee, until repaid or applied to the purposes for which it is deposited, including the applicant's portion of the interest earned thereon, except as otherwise provided in this section, shall continue to be the property of the applicant and shall be held in trust by the municipality. Money deposited shall be held in escrow. The municipality shall deposit the money in a banking institution or savings and loan association in this state insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the state, in an account bearing interest at the minimum rate currently paid by the institution or depository on time or savings deposits. The municipality shall notify the applicant in writing of the name and address of the institution or depository in which the deposit is made and the amount of the deposit. The municipality shall not be required to refund an amount of interest paid on a deposit which does not exceed \$100 for the year. If the amount of interest exceeds \$100, that entire amount shall belong to the applicant and shall be refunded to him annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be; except that the municipality may retain for administrative expenses a sum equivalent to 33 1/3% of that entire amount, which shall be in lieu of all other administrative and custodial expenses.
- (4) Costs for special meetings. The applicant shall reimburse the Borough for all costs incurred as a result of any special meeting, including but not limited to attorneys' fees, engineering fees, transcriber fees, planning consultant fees and any other expert fees.
- (5) Escrow deposits.
- (a) Within 45 days after the filing of an application for development, the Planning Board or its designee shall review said application for development to determine whether the escrow amounts set forth above are adequate. In conducting such review, the following criteria shall be considered:
- [1] The presence or absence of public water and/or sewer servicing the site.
 - [2] Environmental considerations, including but not limited to geological, hydrological and ecological factors.
 - [3] Traffic impact of the proposed development.
 - [4] Impact of the proposed development on existing aquifer and/or water quality.
 - [5] Impact on improvement which might require off-tract or off-site contributions agreements.
- (b) If additional sums are deemed necessary, the applicant shall be notified in writing by the Planning Board or its designee of the required additional amount and shall add such sum to the escrow within 10 days of receipt of such notice for additional sums.
- (c) No application for development shall be deemed complete until such time as the applicant shall have posted with the Borough Treasurer, in cash, certified check or money order, the amount of escrow deposit determined by the Application Review Committee to be required in accordance with the provisions of this chapter. No application shall be deemed complete until the applicant shall complete all forms as required by the Administrative

Officer. If additional sums are deemed necessary for the escrow and the applicant fails to pay such sums within 10 days of receipt of written notice required by Subsection E(6), the application will be declared incomplete regardless of the status of the application and any hearings.

- (d) All escrow charges which are due and owing shall become a lien on the premises with respect to which said charges are required and shall remain so until paid. Said overdue charges shall accrue the same interest from time to time as taxes upon real estate in the Borough. The Borough shall have the same remedies for the collection thereof with interest, costs and penalties as it has by law for the collection of taxes upon real estate.
 - (e) All such escrow funds shall be utilized by the appropriate Board to pay the costs of any professional fees incurred by the Board for review and/or testimony in connection with the particular application for development. All sums not actually so expended shall be refunded to the applicant within 60 days after the resolution of memorialization has been accepted by the appropriate board with respect to such application upon certification to the Borough by the Planning Board that the application has been finally determined. The refunding process will be in accordance with the guidelines and procedures established by the Division of Local Government Services in effect at that time. In no event, however, shall the application fees required pursuant to § 168-2G(1) through (4) be refunded.
 - (f) The Borough Treasurer shall deposit all escrow funds in accordance with N.J.S.A. 40:55D-53.1 and 40A:4-39.
- (6) Reproduction fees. Costs for reproduction of plats, attachments, maps or other supporting documentation shall be paid in full by the requestor prior to release in accordance with current Borough requirements.
 - (7) Tax Map revision fees. A fee as provided in Chapter 168, Article II, per lot or unit shall be charged for all minor and major subdivisions, residential unit site plans or condominium or cooperative residential or commercial development to cover the cost of revising the Borough Tax Map. This fee shall be paid prior to signing of the final plat of a major subdivision by the Chairman and the Secretary of the Planning Board and Borough Engineer/Surveyor.
 - (8) Request for reapproval or extensions of time: fee as provided in Chapter 168, Article II.
 - (9) Certificate of preexisting use: fee as provided in Chapter 168, Article II.
 - (10) Grading permit application. For engineering review of individual plot house location grading plans for fill over 10 cubic yards: fee as provided in Chapter 168, Article II.
 - (11) Site plan charges computation for partial site; developments. In cases where only a portion of a parcel of site are to be involved in the proposed site plan, a site area charge may be charged based upon an area extending 20 feet outside the limits of all construction including grading and landscaping as well as all other areas of site the Borough Engineer believes are reasonably affected by the development application. The 20 feet around disturbed areas shall not extend beyond the property lines. The Borough may still require reasonable improvements and upgrading to portions of the site not within the disturbed or affected areas.
 - (12) Supervision.
 - (a) No contractor, builder, developer or subcontractor shall engage any personnel in any of the work on constructing any improvements unless they are continually supervised by a

competent, English-speaking supervisor acceptable to the Borough Engineer.

- (b) No less than five days prior to commencing construction of any improvements on the site, the developer or his agent shall provide the Borough Engineer with the names, addresses, phone numbers and emergency phone numbers of the subdivider and/or a representative empowered to act for the developer and/or each contractor and their supervisor in charge of the construction, setting forth the aspects of construction for which each is responsible.
- F. Fees in lieu of parking. A parking fund is hereby established for the construction, acquisition, development, expansion or capital repair of public and municipal parking facilities, to provide funds for the construction of a municipal garage and for the payment of other traffic- or transportation-related capital projects or operating expenses of transit facilities designed to reduce reliance on private automobiles, programs to facilitate carpooling or ride-sharing and creation of a safe streetscape for all user groups utilizing all modes of transportation by introducing context-sensitive design elements at intersections and corridors, such as wayfinding signage, crosswalks, and user connections to public and municipal parking facilities. **[Added 9-26-2018 by Ord. No. 18-2018]**
 - (1) If the off-street parking requirements of an application for development are not met as required by the land use regulations of the Borough of Atlantic Highlands or pursuant to any state standard, such as the Residential Site Improvements Standards, the developer must:
 - (a) Apply for approval of a parking space variance, subject to the provisions of the applicable land use regulation and, in the event the variance is granted;
 - (b) Make a contribution to the Borough parking fund in an amount in accordance with the parking deficiency requirements herein.
 - [1] Said contribution shall be due and payable prior to the issuance of the certificate of occupancy for the development.
 - (2) The developer of a new, reconstructed/redeveloped project within the HB, HBD, CBD, WB and LI Districts, which application proposes development with a deficiency in the required number of off-street parking spaces, shall contribute to the parking fund a fee of \$25,000 for each deficient parking space for all new or restored residential units in the Historic and Central Business Districts, and same shall apply when the ground floor area ratio of an existing structure is increased. **[Amended 11-28-2018 by Ord. No. 20-2018; 10-23-2019 by Ord. No. 15-2019]**
 - (3) The provisions of this subsection shall be severable. In the event that any portion of this subsection is found to be invalid for any reason by any court of competent jurisdiction, such judgment shall be limited in its effect only to the portion of the subsection actually adjudged invalid and shall not be deemed to effect the operation of any other portions thereof, which shall remain in full force and effect.
- G. Hiring and payment of expert witnesses; escrow deposit required. The Planning Board shall require, in addition to the application filing fees, escrow deposits which shall be utilized in accordance with the provisions of this section. Such escrow shall be utilized by the Board to pay the cost of any professional fees incurred for review of and/or testimony concerning an application for development submitted by an applicant. The cost of such experts retained by the Planning Board shall be borne by the applicant as set forth in § 150-19A and B herein. **[Added 11-18-2019 by Ord. No. 16-2019]**
 - (1) The funds deposited shall be sufficient to reimburse the Borough for all reasonable costs of consultant and expert evaluation and consultation which shall be utilized by the Planning Board

in connection with the review of any application. Professional services contemplated shall include any professional or consultant hired or engaged by the Planning Board to aid and assist it in reviewing, evaluating and acting upon development applications, including the hiring of experts for reports and testimony, if deemed appropriate and necessary as determined by the Planning Board Engineer upon his review of the application. This may include review by outside consultants when an application is of a nature beyond the scope of expertise of the professionals normally utilized by the municipality.

- (a) Such escrow shall be utilized to reimburse the Borough for all expenses of technical and professional personnel incurred by it necessary to process an application for development before the Planning Board, such as, but not by way of limitation:
 - [1] Charges for review by professional personnel of applications and accompanying documents.
 - [2] Issuance of reports by professional personnel to the Planning Board setting forth recommendations resulting from the review of any documents submitted by the applicant.
 - [3] Charges for a traffic expert whose analysis shall at minimum include, but not be limited to, the study of two weekdays, one weekend and at least four one-hour recording periods per day, two of which must occur during peak hours, in the location of the development.
 - [4] Charges for any telephone conference or meeting requested or initiated by the applicant, his attorney or any of his experts.
 - [5] Review of additional documents submitted by the applicant and issuance of reports relating thereto.
 - [6] Review or preparation of easements, developer's agreements, deeds, resolutions or the like.
 - [7] Preparation for and attendance at special meetings.
 - [8] The cost of independent expert advice or testimony obtained by the Planning Board.
 - (b) The term "technical and professional personnel" or "professional services," as used herein, shall include the services of a duly licensed engineer, surveyor, planner, Planning Board, Municipal or other attorney, realtor, appraiser, environmentalist, traffic or other experts, and their employees or staff, who would provide technical and professional services to ensure an application meets performance standards set forth in this chapter and generally accepted standards for the particular professional field. "Professional personnel" or "professional services" shall also mean experts whose testimony is in an area in which the applicant has presented expert testimony.
- (2) The Borough shall require the deposit of such escrows into an escrow account for the purpose of reimbursing the municipality for payment of such expenses. The applicant shall, as a condition precedent to the application being deemed complete, submit escrow deposits herein set forth to be held in escrow in accordance with the provisions hereof.
 - (3) In the event that the professional and/or expert charges should deplete the escrow account by more than 50% of the original submission, the Chief Financial Officer shall notify the applicant

and require payment of additional escrow sums. Such additional escrow sums shall be sufficient to restore the escrow account to not less than 75% of the original escrow deposit.

- (4) No application for development shall be deemed complete until such time as the applicant shall have posted with the Borough, in cash, certified check or money order, the amount of escrow deposit maintained by the Planning Board to be required in accordance with the provisions of this chapter.

§ 150-20. Affordable housing development fees. [Added 4-11-2007 by Ord. No. 04-2007; amended 2-11-2009 by Ord. No. 02-2009; 5-22-2019 by Ord. No. 07-2019]

A. Findings and purpose.

- (1) In *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the adoption of rules by the Council on Affordable Housing (COAH).
- (2) Pursuant to P.L. 2008, c. 46, § 8 (N.J.S.A. 52:27D-329.2) and the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that were under the jurisdiction of COAH, and that are now before a court of competent jurisdiction and have a Court-approved spending plan, may retain and expend fees collected from both residential and nonresidential development.
- (3) This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with COAH's regulations developed in response to P.L. 2008, c. 46, §§ 8 and 32-38 (N.J.S.A. 52:27D-329.2) and the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7). Fees collected pursuant to this section shall be used for the sole purpose of providing low- and moderate-income housing in accordance with a Court-approved spending plan.

B. Basic requirements.

- (1) This section shall not be effective until approved by the Court.
- (2) The Borough of Atlantic Highlands shall not spend development fees until the Court has approved a plan for spending such fees (spending plan).

C. Definitions. The following terms, as used in this section, 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 housing development.

COAH or THE COUNCIL — The New Jersey Council on Affordable Housing established under the Fair Housing Act.

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 property as permitted

by applicable COAH regulations.

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 §§ 1, 5, and 6 of P.L. 1973, c.123 (N.J.S.A. 54:1-35a through N.J.S.A. 54:1-35c).

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

D. Residential development fees.

(1) Imposition of fees.

- (a) Within the Borough of Atlantic Highlands, all residential developers, except for developers of the types of developments specifically exempted below and developers of developments that include affordable housing, shall pay a fee of 1.5% of the equalized assessed value for all new residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
- (b) When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a bonus development fee of 6% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

(2) Eligible Exactions, Ineligible Exactions and Exemptions for Residential Developments.

- (a) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and/or developments where the developer has made a payment in lieu of on-site construction of affordable units, if permitted by ordinance or by agreement with the Borough of Atlantic Highlands, shall be exempt from the payment of development fees.
- (b) Developments that have received preliminary or final site plan approval prior to the adoption of Atlantic Highlands' first adopted development fee ordinance shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where site plan approval is not applicable, the issuance of a building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the building permit is issued.
- (c) Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion

is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

- (d) Homes demolished and replaced as a result of a natural disaster (such as a fire or flood) shall be exempt from the payment of a development fee.

E. Nonresidential development fees.

(1) Imposition of fees.

- (a) Within all zoning districts, nonresidential developers, except for developers of the types of developments specifically exempted below, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.
- (b) Within all zoning districts, nonresidential developers, except for developers of the types of developments specifically exempted below, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- (c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvements and the equalized assessed value of the newly improved structure, i.e., land and improvements, and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

(2) Eligible Exactions, Ineligible Exactions and Exemptions for Nonresidential Development.

- (a) The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.
- (b) The 2.5% development fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing footprint, reconstruction, renovations and repairs.
- (c) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Nonresidential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.
- (d) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to the Statewide Nonresidential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy for the nonresidential development, whichever is later.
- (e) If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit

the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Borough of Atlantic Highlands as a lien against the real property of the owner.

F. Collection procedures.

- (1) Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the Construction Official responsible for the issuance of a building permit.
- (2) For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Nonresidential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- (3) The Construction Official responsible for the issuance of a building permit shall notify the local Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
- (4) Within 90 days of receipt of such notification, the Borough Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- (5) The Construction Official responsible for the issuance of a final certificate of occupancy shall notify the Borough Tax Assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.
- (6) Within 10 business days of a request for the scheduling of a final inspection, the Borough Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- (7) Should the Borough of Atlantic Highlands fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b of § 37 of P.L. 2008, c.46 (N.J.S.A. 40:55D-8.6).
- (8) Fifty percent of the initially calculated development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the building permit and that determined at the time of issuance of the certificate of occupancy.
- (9) Appeal of development fees.
 - (a) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Such a challenge must be made within 45 days from the issuance of the certificate of occupancy. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough of Atlantic Highlands. 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.

- (b) A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Borough of Atlantic Highlands. 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.

G. Affordable housing trust fund.

- (1) There is hereby created a separate, interest-bearing Affordable Housing Trust Fund to be maintained by the Chief Financial Officer of the Borough of Atlantic Highlands 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 following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (a) Payments in lieu of on-site construction of affordable units or of a fraction of an affordable unit, where permitted by ordinance or by agreement with the Borough of Atlantic Highlands;
 - (b) Funds contributed by developers to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
 - (c) Rental income from municipally operated units;
 - (d) Repayments from affordable housing program loans;
 - (e) Recapture funds;
 - (f) Proceeds from the sale of affordable units; and
 - (g) Any other funds collected in connection with Atlantic Highlands' affordable housing program.
- (3) In the event of a failure by the Borough of Atlantic Highlands to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved spending plan and to expend funds within the applicable required time period as set forth in *In re Tp. of Monroe*, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of Atlantic Highlands, or, if not practicable, then within the county or the housing region.

- (a) Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the noncompliant condition(s), and upon a finding of continuing and deliberate noncompliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.
- (4) Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court.

H. Use of funds.

- (1) The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address the Borough of Atlantic Highlands' fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market to affordable program; Regional Housing Partnership programs; conversion of existing nonresidential buildings to create new affordable units; green building strategies designed to be cost saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by the Court and specified in the approved spending plan.
- (2) At least 30% of all development fees collected and interest earned on such fees shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of the median income for Housing Region 4, in which Atlantic Highlands is located.
 - (a) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the spending plan.
 - (b) Affordability assistance to households earning 30% or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income. The specific programs to be used for very low income affordability assistance shall be identified and described within the spending plan.
 - (c) Payments in lieu of constructing affordable housing units on site, if permitted by ordinance or by agreement with the Borough of Atlantic Highlands, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- (3) The Borough of Atlantic Highlands may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability

assistance.

- (4) No more than 20% of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program or a rehabilitation program.
 - (a) In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20% of collected development fees that may be expended on administration.
 - (b) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the Court are not eligible uses of the Affordable Housing Trust Fund.
- I. Monitoring. The Borough of Atlantic Highlands shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, Council on Affordable Housing or Local Government Services or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and nonresidential developers, payments in lieu of constructing affordable units on site (if permitted by ordinance or by agreement with the Borough), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Borough owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with Atlantic Highlands' affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the spending plan approved by the Court.
- J. Ongoing collection of fees.
 - (1) The ability for the Borough of Atlantic Highlands to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its judgment of compliance unless the Borough of Atlantic Highlands has first filed an adopted Housing Element and Fair Share Plan with the Court or with a designated state administrative agency, has petitioned for a judgment of compliance from the Court or for substantive certification or its equivalent from a state administrative agency authorized to approve and administer municipal affordable housing compliance and has received approval of its development fee ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.
 - (2) If the Borough of Atlantic Highlands fails to renew its ability to impose and collect development fees prior to the expiration of its judgment of compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to § 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320).
 - (3) The Borough of Atlantic Highlands shall not impose a residential development fee on a

development that receives preliminary or final site plan approval after the expiration of its judgment of compliance, nor shall the Borough of Atlantic Highlands retroactively impose a development fee on such a development. The Borough of Atlantic Highlands also shall not expend any of its collected development fees after the expiration of its judgment of compliance.

ARTICLE IV
Procedure

§ 150-21. Approval required.

The purpose of this article is to establish the procedure for review and action on applications requiring subdivision, site plan, conditional use, or variance approval. The procedure is intended to provide orderly and expeditious processing of such applications. In all zones for all proposed uses, subdivision, site development or construction other than an exempt development, site plan and/or subdivision approval shall be required prior to:

- A. Subdivision or resubdivision of land.
- B. Issuance of a development permit or building permit.
- C. Commencement of any regulated use or activity, which includes:
 - (1) The erection, construction, alteration, repair, remodeling, or conversion of any building or structures;
 - (2) The use or occupancy of any building, structure or land;
 - (3) Any activity which entails the construction of any improvements or the alteration of the natural condition of any land.
 - (4) Demolition or removal of any historic structure or any building or structure within an historic district as designated on the Borough Master Plan except that site plan approval shall not be required for individual lot applications for one- or two-dwelling-unit buildings pursuant to N.J.S.A. 40:55D-37.

§ 150-22. Preapplication (informal review of concept plan).

- A. At the request of the applicant, the Planning Board shall grant an informal review of a concept plan for a development for which the applicant intends to prepare and submit an application for development. The purpose of the concept plan is to provide Planning Board input in the formative stages of subdivision and site plan design.
- B. Applicants seeking concept plan informal review shall submit the items stipulated in Article XII of this chapter 24 days before the concept plan meeting. These items provide the developer and Planning Board with an opportunity to discuss the development proposal in its formative stages.
- C. A brief written summary of the concept plan review shall be provided within 30 working days after the meeting.
- D. The applicant will be charged the fee established for concept plan review. The amount of any fee for such informal review shall be a credit towards fees for review of the application for a development. Only one concept plan review fee shall be credited.
- E. The applicant shall not be bound by any concept plan for which review is requested, nor shall the Planning Board be bound by any such review.
- F. The applicant uses the information resulting from any concept plan review entirely at the applicant's own risk. The applicant shall make no claim against the Borough, the Planning Board or any of its agents or employees which is in any way related to a concept plan review.

§ 150-23. Application.

- A. Assignment. The applicant shall have the option of filing an application for development with the Zoning Officer as to which approvals are required and the Planning Board. The Zoning Officer's determination shall be presumed to be correct. The following applications may be filed:
- (1) Exempt subdivision.
 - (2) Minor subdivision.
 - (3) Preliminary major subdivision.
 - (4) Final major subdivision.
 - (5) Minor site plan.
 - (6) Preliminary major site plan.
 - (7) Variance.
 - (8) Conditional use.
 - (9) Final major site plan.
 - (10) Waiver of site plan approval. **[Added 5-14-2014 by Ord. No. 07-2014]**
- B. Content. An application for development shall include the items specified in Article XII, Specification of Documents to be Submitted, of this chapter which constitutes a checklist of items to be submitted for subdivision and site plan review. A copy of this checklist shall be completed by the applicant, and submitted with the application form.
- C. Complete application.
- (1) A subdivision and site plan application shall be complete for purposes of commencing the applicable time period for action when so certified by the person or committee by the rules of the Planning Board to review for completeness. In the event that the application is not certified to be complete within 45 days of the date of its submission, the application shall be deemed complete upon the expiration of the forty-five-day period for purposes of commencing the applicable time period unless: 1) the application lacks information indicated on the checklist of items specified in Article XII; 2) the checklist has been provided in writing to the applicant; and 3) the Planning Board or its authorized committee or designee has notified the applicant, in writing, of the deficiencies in the application within 45 days of submission of the application. The applicant may request that one or more of the submission requirements be waived, in which event the Planning Board or its authorized committee shall grant or deny the request within 45 days of the date of its submission. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that the applicant is entitled to approval of the application. The Planning Board may subsequently require correction of any information found to be in error and submission of additional information not specified in these regulations or any revisions in the accompanying documents, as are reasonably necessary to make an informed decision as to whether the requirements necessary for approval of the application for development have been met. The application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents required by the Planning Board.

- (2) An applicant may appeal the decision of the authorized committee or designee concerning completeness of an application to the Planning Board. The Planning Board shall have 45 days after receipt of a written request to schedule a public hearing at which time the Planning Board will determine if the application is complete. The Board shall affirm, modify, or reverse the decision of its authorized committee or designee.

§ 150-24. Variances.

- A. In cases where a proposed development requires Planning Board action on an application for the grant of a variance pursuant to N.J.S.A. 40:55D-70c or does not involve a site plan or subdivision but requires a variance pursuant to N.J.S.A. 40:55D-7c or requires the direction for issuance of a building permit pursuant to N.J.S.A. 40:55D-34 or 40:55D-36 or where a party requests Planning Board action on an appeal pursuant to N.J.S.A. 40:55D-70a. or on an interpretation pursuant to N.J.S.A. 40:55D-70b. the applicant shall submit to the Planning Board the items required in Article XII of this chapter, together with an executed application form, the prescribed fee, and evidence that no taxes or assessments are outstanding against the property.
- B. The application shall be declared complete or incomplete within a forty-five-day period from the date of its submission according to the provision of Article IV, § 150-23C, of this chapter.
- C. The Planning Board shall render a decision not later than 120 days after the date an appeal is taken from the decision of an Administrative Officer or the submission of a complete application for development to the Planning Board. Failure of the Board to render a decision within the one-hundred-twenty-day period or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant.

§ 150-25. Minor subdivision and minor site plan procedure.

- A. Any applicant requesting approval of a proposed minor subdivision or minor site plan as defined in this chapter shall submit to the Administrative Officer or designee the items required in Article XII of this chapter, together with an executed application form, the prescribed fee, and evidence that no taxes or assessments are outstanding against the property.
- B. The application shall be declared complete or incomplete within a forty-five-day period from the date of its submission according to the provisions of Article IV, § 150-23C, of this chapter.
- C. The action of the Planning Board under this article must be taken within 45 days, or 120 days if a variance is required or within such further time as is agreed to by the applicant and the Planning Board. Failure of the Planning Board to act within the period prescribed shall constitute minor subdivision or site plan approval and a certificate of the Borough Administrator as to the failure of the Planning Board to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval, herein required, and shall be so accepted by the County Recording Officer for purposes of filing subdivision plats.
- D. Except as provided in Subsection F, approval of a minor subdivision shall expire 190 days from the date on which the resolution of municipal approval is adopted, unless within such period a plat in conformity with such approval and the provisions of the Map Filing Law, N.J.S.A. 46:23-9.9 et seq., or a deed clearly describing the approved minor subdivision is filed by the developer with the County Recording Officer, the Municipal Engineer and the Municipal Tax Assessor as specified by N.J.S.A. 40:55D-1 et seq. Any such plat or deed accepted for such filing shall have been signed by the Chairperson and Secretary of the Planning Board.

- E. The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor subdivision and site plan approval was granted, shall not be changed for a period of two years after the date on which the resolution of minor subdivision approval is adopted, provided that the approved minor subdivision shall have been duly recorded as provided in Subsection D above.
- F. The Planning Board may extend the one-hundred-ninety-day period for filing a minor subdivision plat or deed pursuant to Subsection D above if the developer proves to the reasonable satisfaction of the Planning Board: 1) that the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities; and 2) that the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the Planning Board. The developer may apply for the extension either before or after what would otherwise be the expiration date.
- G. The Planning Board shall grant an extension of minor subdivision approval for a period determined by the Board but not exceeding one year from what would otherwise be the expiration date, if the developer proves to the reasonable satisfaction of the Board that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued the required approvals. A developer shall apply for the extension before 1) what would otherwise be the expiration date of minor subdivision approval; or 2) the 91st day after the developer receives the last legally required approval from the governmental entities, whichever occurs later.
- H. The Zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor site plan approval was granted, shall not be changed for a period of two years after the date of minor site plan approval. The Planning Board shall grant an extension of this period for a period determined by the Board not exceeding one year from what would otherwise be the expiration date, if the developer proves to the reasonable satisfaction of the Board that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued the required approvals. A developer shall apply for this extension before 1) what would otherwise be the expiration date; or 2) the 91st day after the date on which the developer receives the last of the legally required approval from other governmental entities, whichever occurs later.

§ 150-26. Major subdivision and major site plan procedure.

- A. Preliminary approval of major subdivisions and major site plans.
 - (1) The applicant seeking preliminary major subdivision or preliminary major site plan approval shall submit to the Administrative Officer the materials stipulated in Article XII of this chapter.
 - (2) The application shall be declared complete within a forty-five-day period from the date of its submission according to the provisions of Article IV, § 150-23C, of this chapter.
 - (3) The application for major subdivision or major site plan shall be referred to the Planning Board.
 - (4) A complete application for a subdivision of 10 or fewer lots, or for a site plan of 10 acres of land or less or 10 dwelling units or less, shall be acted upon within 45 days of the date of such submission, or 120 days if a variance is required, or within such further time as may be consented to by the developer. A subdivision of more than 10 lots, or a site plan that involves

more than 10 acres of land or more than 10 dwelling units, shall be acted upon within 95 days of the date of such submissions, or 120 days if a variance is required, or within such further time as may be consented to by the developer. Otherwise, the Planning Board shall be deemed to have granted preliminary subdivision or site plan approval.

- B. Effect of preliminary approval of major subdivisions and major site plans. Preliminary approval of a major subdivision and site plan shall, except as provided in Subsection B(4) of this section, confer upon the applicant the following rights for a three-year period from the date of the preliminary approval as specified by N.J.S.A. 40:55D-1 et seq.:
- (1) That the general terms and conditions on which preliminary approval was granted shall not be changed, including, but not limited to, use requirements; layout and design standards for streets, curbs and sidewalks; lot sizes; yard dimensions and off-tract improvements; and in the case of a site plan, any requirements peculiar to site plan approval pursuant to N.J.S.A. 40:55D-41, except that nothing herein shall be construed to prevent the municipality from modifying by ordinance such general terms and conditions of preliminary approval as related to public health and safety;
 - (2) That the applicant may submit for final approval on or before the expiration date of preliminary approval the whole or a section or sections of the preliminary subdivision plat or site plan, as the case may be; and
 - (3) That the applicant may apply for and the Planning Board may grant extension on such preliminary approval for additional periods of at least one year but not to exceed a total extension of two years, provided that if the design and improvement standards have been revised by ordinance, such revised standards may govern.
 - (4) Where a developer plans to install the improvements prior to final approval, the developer shall submit the engineering plans and specifications for the improvements to the Municipal Engineer and the required fees and insurance certificate to the Municipal Clerk, who shall act upon them within 35 days. In the event of a denial, the specific reasons must be enumerated in letter to the applicant. If revised plans are submitted in response to the denial letter, they shall be approved or denied within 20 days with the same requirements as previously imposed for a denial. After the plans are approved, the developer may install the improvements prior to final approval. In addition to or as part of the performance guarantees, the developer shall be required to furnish a restoration bond for 120% of the maximum cost of restoring the site in the event that the improvements are not complete within two years from the commencement of the work on any section in the development or prior to the expiration of preliminary approval, whichever occurs first. The bond shall either be a security bond, a letter of credit, or an escrow account in accordance with Article X.
 - (5) Whenever the Planning Board grants an extension of preliminary approval pursuant to Subsection B(3) or (4) above and preliminary approval has expired before the date is granted, the extension shall begin on what would otherwise be the expiration date. The developer may apply for the extension either before or after what would otherwise be the expiration date.
 - (6) The Planning Board shall grant an extension of this preliminary approval for a period determined by the Board but not exceeding one year from what would otherwise be the expiration date, if the developer proves to the reasonable satisfaction of the Board that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued the required approvals. A developer shall apply for the extension before 1) what would otherwise be the expiration date of

preliminary approval; or 2) the 91st day after the developer receives the last legally required approval from other governmental entities, whichever occurs later. An extension granted pursuant to this subsection shall not preclude the Planning Board from granting an extension pursuant to Subsection B(3) or (4) above.

C. Final approval.

- (1) An applicant requesting final approval of a proposed major subdivision and site plan shall submit to the Administrative Officer or other designee the materials specified in Article XII of this chapter. Unless the preliminary plat was approved without changes, the final plat shall have incorporated all changes or modifications required by the Planning Board. The final plat shall also be accompanied by a statement from the Municipal Engineer that the municipality is in receipt of as-built plans showing all streets and utilities in exact location and elevation and identifying those portions already installed and those to be installed, and/or certified in the amount of performance guarantees required to assure completion of those improvements not yet installed as stipulated in Article X of this chapter.
- (2) The application for final subdivision or site plan approval shall be declared complete within a forty-five-day period from the date of its submission according to the provisions of § 150-23C of this chapter.
- (3) Final approval shall be granted or denied within 45 days after submission of a complete application to the Administrative Officer, or other designee, or within such further time as may be consented to by the applicant. Failure of the Planning Board to act within the period prescribed shall constitute final approval and a certificate of the Borough Administrator as to the failure of the Planning Board to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval, herein required, and shall be so accepted by the County Recording Officer for purpose of filing subdivision plats.
- (4) Within 95 days of the adoption of the resolution of final approval, the applicant shall comply with the conditions set forth therein. If the conditions are not satisfied, then the approval shall expire. The Board may, for good cause shown, extend this time period.
- (5) Final approval of a major subdivision shall expire 95 days from the date of signing of the plat by the Chairman and Secretary of the Planning Board unless within such period the plat shall have been duly filed by the developer with the County Recording Officer. The Planning Board may, for good cause shown, extend the period for recording for an additional period not to exceed 190 days from the date of signing of the plat. The Planning Board may extend the ninety-five-day or one-hundred-ninety-day period if the developer proves, to the reasonable satisfaction of the Planning Board 1) that the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities; and 2) that the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the Planning Board. The developer may apply for an extension either before or after the original expiration date.
- (6) No subdivision plat shall be accepted for filing by the County Recording Officer until it has been approved by the Planning Board as indicated on the instrument by the signature of the Chairman and Secretary of the Planning Board or a certificate has been issued, pursuant to N.J.S.A. 40:55D-47, 40:55D-50, 40:55D-56, 40:55D-61, 40:55D-67 or 40:55D-76. The signatures of the Chairman and Secretary of the Planning Board shall not be affixed until the

developer has posted the guarantees required pursuant to Article X of this chapter.

D. Effect of final approval of major subdivisions and major site plans.

- (1) The zoning requirements applicable to the preliminary approval granted and all other rights conferred upon the developer pursuant to preliminary approval whether conditionally or otherwise shall not be changed for a period of two years after the date on which the resolution of final approval is adopted; provided that in the case of major subdivision, the rights conferred by this section shall expire if the plat has not been duly recorded within the time period provided in N.J.S.A. 40:55D-54. If the developer has followed the standards prescribed for final approval and in the case of a subdivision has duly recorded the plat, the Planning Board may extend such period of protection for extensions of one year, but not to exceed three extensions.
- (2) In the case of a subdivision or site plan for a conventional subdivision or site plan for 150 acres or more, or site plan for development of a nonresidential floor area of 200,000 square feet or more, the Planning Board may grant the rights referred to in Subsection D(1) of this section for such period of time, longer than two years, as shall be determined by the Planning Board to be reasonable taking into consideration: 1) the number of dwelling units and nonresidential floor area permissible under final approval; 2) economic conditions; and 3) the comprehensiveness of the development. The developer may apply for and the Planning Board may thereafter grant, an extension of final approval for such additional period of time as shall be determined by the Planning Board to be reasonable taking into consideration: 1) the number of dwelling units and nonresidential floor area permissible under final approval; 2) the number of dwelling units and nonresidential floor area remaining to be developed; 3) economic conditions; and 4) the comprehensiveness of the development.
- (3) Whenever the Planning Board grants an extension of final approval pursuant to Subsection D(1) or (2) above, and final approval has expired before the date on which the extension is granted, the extension shall begin on what would otherwise be the expiration date. The developer may apply for the extension whether before or after what would otherwise be the expiration date.
- (4) The Planning Board shall grant an extension of final approval for a period determined by the Board but not exceeding one year from what would otherwise be the expiration date, if the developer proves to the reasonable satisfaction of the Board that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued these approvals. The developer shall apply for the extension before 1) what would otherwise be the expiration date of final approval; or 2) the 91st day after the developer receives the last legally required approval from other governmental entities, whichever occurs later. An extension granted pursuant to this subsection shall not preclude the Planning Board from granting an extension pursuant to Subsection D(1) or (2) above.

§ 150-27. Planning Board review.

- A. Whenever an application for approval of a subdivision plat, site plan, or conditional use includes a request for relief pursuant to N.J.S.A. 40:55D-60, the Planning Board shall grant or deny approval of the application within 120 days after submission by a developer of a complete application or within such further time as may be consented to by the applicant. In the event that the developer elects to submit separate consecutive applications, the aforesaid provision shall apply to the application for approval of the variance of direction for issuance of a permit. The period for granting or denying any

subsequent approval shall be as otherwise provided in this chapter. Failure of the Planning Board to act within the period prescribed shall constitute approval of the application and a certificate of the Administrative Officer as to the failure of the Planning Board to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval, herein required, and shall be so accepted by the County Recording Officer for purposes of filing subdivision plats.

- B. Whenever relief is requested pursuant to this section, notice of the hearing on the application for development shall include reference to the request for a variance, or direction for issuance of a permit, as the case may be.
- C. The developer may elect to submit a separate application requesting approval of the variance or direction of the issuance of a permit and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate approval of the variance or direction of the issuance of a permit shall be conditioned upon grant of all required subsequent approvals by the Planning Board. No such subsequent approval shall be granted unless the approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and this chapter.
- D. Whenever review or approval of the application by the County Planning Board is required by § 5 of P.L. 1968, c. 285 (N.J.S.A. 40:27-6.3), in the case of a subdivision, or § 8 of P.L. 1968, c. 285 (N.J.S.A. 40:27-6.6), in the case of a site plan, the Borough Planning Board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required time period.

§ 150-28. Claiming approval due to failure to act.

An applicant may claim approval of his application for development by reason of the failure of the approving authority to act within the time period prescribed by complying with the following provisions:

- A. The applicant shall provide notice of the default approval to the Planning Board and to all those entitled to notice by personal service or certified mail of the hearing on the application for development; but for purposes of determining who is entitled to notice, the hearing on the application for development shall be deemed to have required public notice pursuant to N.J.S.A. 40:55D-12.
- B. The applicant shall arrange publication of a notice of the default approval in the official newspaper of the Borough, if there be one, or in a newspaper of general circulation in the Borough.
- C. The applicant shall file an affidavit of proof of service and publication with the Administrative Officer (Borough Administrator).
- D. Upon satisfaction of these requirements by the applicant, the Administrative Officer (Borough Administrator) shall, if he or she agrees with the facts as set forth by the applicant in the notice of default approval, issue a certificate of default approval and it shall be sufficient in lieu of the written endorsement or other evidence of approval, herein required, and shall be so accepted by the County Recording Officer for purposes of filing subdivision plats.
- E. If the Administrative Officer (Borough Administrator) does not agree with the facts as set forth by the applicant in the notice of default approval, he or she shall so notify the applicant and the Planning Board, setting forth the specific items of disagreement, within 30 days of the date the applicant submits the proof of service and publication as required by Subsection C hereof. Unless appealed

pursuant to § 150-8D hereof, the decision of the Administrative Officer (Borough Administrator) shall be conclusive.

ARTICLE V
Zoning District Regulations

§ 150-29. Zoning Map and schedule.

A. Establishment, authentication, maintenance, and revision.

- (1) Zoning Map. The locations and boundaries of the districts of the Borough are hereby established as shown on the Zoning Map of the Borough of Atlantic Highlands, New Jersey, which is attached hereto as Exhibit 5-1, and is hereby made a part of this chapter, together with all notations, references and designations shown thereon and dated and amended as follows.¹⁹⁷
- (2) Schedule of district zone requirements. District regulations for zone districts within the Borough of Atlantic Highlands are hereby established and are attached hereto, as amended Exhibit 5-2, and are hereby made a part of this chapter, together with all notations, references and designations shown thereon.¹⁹⁸ **[Amended 2-22-2024 by Ord. No. 03-2024]**
- (3) Schedule of uses. Permitted uses within each zone district in the Borough of Atlantic Highlands are hereby established and attached hereto, as Exhibit 5-4, and are hereby made a part of this chapter.¹⁹⁹
- (4) Authentication of Zoning Map. Subsequent to the adoption of this chapter, and any revisions to the Zoning Map, three copies of the Zoning Map shall be authenticated by the Mayor's signature, and the seal of the municipality, attested by the Municipal Clerk, under the following certification:

"I certify that this is the Zoning Map of the Borough of Atlantic Highlands, New Jersey, referred to in the Chapters of the Borough of Atlantic Highlands, New Jersey."

- (5) Maintenance of the Zoning Map. Authenticated copies of the Zoning Map shall be maintained in the office of the Municipal Clerk and Zoning Officer and shall be made available for public reference. Copies of all or a part of the Zoning Map may be reproduced for public distribution. One authenticated copy shall be forwarded to the Monmouth County Planning Board in accordance with N.J.S.A. 40:55D-16. However, the original copy of the Zoning Map maintained in the office of the Municipal Clerk shall be the final authority as to the current status of zoning districts in the Borough of Atlantic Highlands.
- (6) Revisions to the Zoning Map.
 - (a) When, in accordance with the provisions of this chapter and of state law, revisions are made in district boundaries or other matters portrayed in the Zoning Map, such changes will be made on the Zoning Map with an entry bearing the date of adoption, ordinance number, a brief description of the change(s).
 - (b) No changes of any nature shall be made to the Zoning Map except in conformity with the above procedure. Any unauthorized changes to the Map or its contents by any person or

197.Editor's Note: Exhibit 5-1 is on file in the Borough offices.

198.Editor's Note: Exhibit 5-2 is included at the end of this chapter.

199.Editor's Note: Exhibit 5-4 is included at the end of this chapter.

persons shall be considered a violation of this chapter.

B. Interpretation of district boundaries.

- (1) Zone district boundaries are intended to follow street, lot or property lines, or other natural lines such as the center line of watercourses, ditches or lagoons, unless such district or zone boundaries are fixed by dimension on the Zoning Map or by description, and shall include contiguous riparian lands subsequently acquired and/or filled, and lands acquired by the accretion or stream diversion by natural causes.
- (2) In constructing the Zoning Map, the following rules shall apply:
 - (a) Boundaries indicated as following the center lines of streets, highways or alleys or streams, rivers or other bodies of water shall be construed to follow such center lines.
 - (b) Boundaries indicated as approximately following plotted lot lines shall be construed as following such lot lines.
 - (c) Boundaries indicated as parallel to or extensions of features indicated in Subsections A through B above shall be so construed. Distances not specifically indicated on the Zoning Map shall be determined by the use of the scale appearing thereon.
 - (d) Where a zone boundary fixed by dimensions approximately follows and is not more than 20 feet distant from a lot line, such lot line shall be construed to be the zone boundary.
 - (e) The MC Marine Conservation District shall be construed to apply to those areas shown on the Zoning Map which are waterward of the mean high water line.

§ 150-30. Description of districts.

- A. The Borough of Atlantic Highlands is hereby divided into districts as follows: **[Amended 1-8-2003 by Ord. No. 15-2002; 2-26-2003 by Ord. No. 4-2003; 9-20-2006 by Ord. No. 16-2006]**

R-1	Single-Family Residential
R-2	Single-Family Residential
R-3	Single-Family Residential
RTH	Townhouse Residential
SC	Senior Citizen Residential
MF1	Multifamily Garden Units
MF2	Multifamily Mid-Rise Units
O-R	Office-Residential
HBD	Historic Business District
CBD	Central Business District
HB	Highway Business
WB	Waterfront Business
MR	Marine Recreation

LI	Light Industrial
MC	Marine Conservation District
PB	Public Open Space/Recreation District
ST	Steep Slope Overlay Area
AH	Affordable Housing

- B. The regulations set forth in this chapter for each district shall be minimum regulations and shall apply uniformly to each class of structure or land within the district, except as hereinafter provided.
- C. No building or structure shall hereafter be erected and no existing building or structure shall be moved, altered, added to or enlarged, nor shall any land or building or portion of a building or structure be used, designed, or arranged to be used for any purpose unless in conformity with all of the regulations herein specified for the district in which it is located.
- D. Every principal building shall be located on a lot as defined in this chapter. Except for multifamily, nonresidential and qualifying bed-and-breakfast establishment development, no more than one principal building and its accessory buildings shall hereafter be erected on any one lot. **[Amended 7-27-2011 by Ord. No. 10-2011]**
- E. Yards or lots created after the effective date of this chapter shall meet the minimum requirements established by this chapter.
- F. Any application for expansion or enlargement of the existing structure on an improved lot in the R-3 Zone that is otherwise conforming with all standards other than being deficient in lot area shall be deemed conforming in lot area and shall not require a variance for that lot area deficiency. **[Added 2-26-2003 by Ord. No. 4-2003]**
- G. All new residential development or mixed commercial and residential development producing five or more residential units in the CBD, HBD, HB, OR, R-TH, or MR-1 Zones shall be required to provide a minimum of 20% of all dwelling units to be affordable for very-low-, low- and moderate-income households. As to bedroom mixes, at least 20% of all low- and moderate-income units shall be three-bedroom units, at least 30% of all low- and moderate-income units shall be two-bedroom units, and the combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units. The remainder, if any, may be allocated at the discretion of the developer. All affordable housing units shall be developed pursuant to § 50-105 of Chapter 150 of the Borough Code, and shall comply with the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26.1 et seq., or any successor legislation, with the exception that in lieu of 10% of affordable units in rental projects being required to be affordable to households earning at or below 35% of the regional median income, 13% of affordable units in such projects is required to be affordable to households earning at or below 30% of the regional median income. **[Added 10-28-2015 by Ord. No. 06-2015; amended 9-26-2018 by Ord. No. 16-2018]**

§ 150-31. Permitted and prohibited uses.

- A. Any use, except for essential services, which is not specifically listed as a permitted use, an accessory use or a conditional use on the Schedule of Uses, Exhibit 5-4,²⁰⁰ shall be deemed a prohibited use.
- B. Prohibited uses shall include but not be limited to the following:

200. Editor's Note: Exhibit 5-4 is included as an attachment to this chapter.

- (1) All billboards, signboards, advertising signs and devices not expressly related to the business being conducted on the premises or otherwise specifically permitted by this chapter.
- (2) Carousel, merry-go-round, roller coaster, Ferris wheels, whirl-a-gig, pony or train rides, midways or side shows, and similar outdoor commercial recreation uses.
- (3) Auction markets.
- (4) The storage for sale of used construction or building materials.
- (5) Junkyards, automobile wrecking yards or disassembly yards, or the sorting of scrap metal, paper, rags, or other scrap material, except for recycling operations operated by or with the approval of the Borough.
- (6) Migrant labor camps.
- (7) Privately operated dumps for the disposal of garbage, trash, refuse, junk, or other such material.
- (8) Adult bookstores.
- (9) Peep shows.
- (10) Massage parlors.
- (11) Amusement arcade.
- (12) Explosive storage, except small arms ammunition, or by special permit, where explosives are to be used on the premises.
- (13) Incineration, reduction, storage or dumping of slaughterhouse refuse, rancid fats, garbage, or dead animals.
- (14) Kennels.
- (15) Quarries or the processing of stone, dirt or gravel.
- (16) The open storage in any yard, of more than one, or, in a front yard, of any unlicensed or inoperative motor vehicle, or the new or used parts of any motor vehicle or trailer, or material which has been a part of any motor vehicle or trailer.
- (17) The overnight storage of any commercial vehicle in residential zones, except that one such vehicle having a gross weight of not more than 8,000 pounds may be stored as an accessory use to the principal permitted use.
- (18) Radio towers, antennas, and satellite dishes except as herein permitted.
- (19) Slaughtering and slaughterhouses.
- (20) House trailer parks, mobile home parks, and overnight or tourist cabins.
- (21) Any airport, landing field, landing strip, heliport, helistop, off-heliport landing site, sport parachuting center or any other facility used for the landing or take off of any aircraft, either as a primary use or as a use accessory, auxiliary or incidental to any primary use.
- (22) The manufacture, transportation, storage or utilization of genetically engineered material.

- (23) The breeding, raising or keeping of any animals for business or hire. This shall not be construed to prohibit pet stores, as defined, when permitted as a use within a commercial district, nor to prohibit an occasional breeding of a pet incidental to the operation of a household.
- (24) Any sign which may interfere with traffic control, directional or warning signals and any flashing or moving sign.
- (25) Crematoria.
- (26) Any use which emits excessive or objectionable amounts of dust, fumes, noise, smoke, vibration or waste products.
- (27) Body art and tattoo parlors, except as a "personal services" establishment in the LI Light Industrial Zone. **[Added 7-9-2008 by Ord. No. 10-2008]**
- (28) All classes (1 through 6) of cannabis establishment or cannabis distributors or cannabis delivery services, including cannabis cultivators, manufacturers, wholesalers, retailers, cannabis testing facilities, medical cannabis dispensaries, clinical registrant or cannabis retailer, including any alternative treatment centers deemed to hold a medical cannabis dispensary permit pursuant to Section 7 of P.L. 2009, c. 307 (N.J.S.A. 24:6I-7), are expressly prohibited within the Borough of Atlantic Highlands. **[Added 8-12-2021 by Ord. No. 18-2021]**

§ 150-32. Affordable Housing Zone. [Added 9-20-2006 by Ord. No. 16-2006]

A. Purpose.

- (1) The AH Zone is intended to fulfill the mandates of the Mount Laurel II Supreme Court decision and comply with the rules and regulations of the New Jersey Council on Affordable Housing (COAH).
- (2) The AH Zone is intended to provide the opportunity to construct affordable housing within the Borough of Atlantic Highlands.

B. Use regulations.

- (1) Permitted principal use:
 - (a) Two-family attached housing.
- (2) Permitted accessory uses:
 - (a) Off-street driveways and parking facilities;
 - (b) Retaining walls and fences.
 - (c) Additional customary accessory structures and uses are permitted if they serve, and are incidental to, the primary permitted use.

C. Bulk requirements.

- (1) Two-family developments in the AH Zone shall comply with each of the following requirements:
 - (a) Minimum lot area: 6,000 square feet.

- (b) Minimum lot width: 30 feet.
- (c) Minimum yard dimensions:
 - [1] Front: 20 feet.
 - [2] Side (one): five feet.
 - [3] Side (combined): 10 feet.
 - [4] Rear: 20 feet.
- (d) Maximum building height: three stories/40 feet.
- (e) On-site parking: conform to RSIS.

D. Supplemental development regulations.

- (1) All dwelling units in the AH Zone shall at all times be affordable to either low- or moderate-income households. In accordance with COAH regulations, no less than 50% of the total number of affordable dwelling units in the AH Zone shall be affordable to low-income households.
- (2) All affordable housing units shall be affirmatively marketed throughout the housing region comprising Mercer, Monmouth, and Ocean Counties in accordance with current applicable COAH rules and regulations and at all times be occupied by a certified low- or moderate-income household.
- (3) All affordable housing units constructed herein shall be deed restricted for a period of years in accordance with current applicable COAH rules and regulations.
- (4) All affordable housing units shall at all times comply with applicable COAH uniform affordability controls.
- (5) No less than 25% of the dwelling units in the AH Zone shall be renter-occupied. Nothing in this amendment is intended to prohibit more than 25% of the units from being renter-occupied.
- (6) COAH requirements concerning bedroom distribution shall be satisfied on a zone-wide basis.
- (7) A developer of a through lot in this zone has the option of determining which lot line shall be designated and function as the frontage. The lot line opposite the designated frontage line shall be considered a rear lot line. Driveway access to and from either street shall be permitted.

E. The Zoning Map of the Borough of Atlantic Highlands²⁰¹ shall be and is hereby amended and revised to add thereto the AH Affordable Housing Zone, and to designate and fix the boundaries of said zone to include the following properties: **[Amended 7-9-2008 by Ord. No. 08-2008]**

- (1) Block 62, Lot 4 (Simpson Avenue)
- (2) Block 136, Lot 1 (21 Leonard Avenue)

201.Editor's Note: The Zoning Map is on file in the Borough offices.

ARTICLE VI
Conditional Uses

§ 150-33. Purpose.

Certain uses are necessary to serve the needs of the Borough's citizens but such uses may become inimical to the public health, safety, and welfare unless established according to specifications and standards controlling their limit and extent. Accordingly, this chapter designates such uses as conditional uses to be permitted only if the conditions specified by this article are complied with as determined by the review of the Planning Board.

§ 150-34. General provisions.

The following shall apply to the review and approval of a conditional use:

- A. The use for which an application is being made shall be specifically listed as a conditional use within the zone where the property is located.
- B. Site plan approval shall be required unless otherwise specified in this chapter.
- C. The conditional use shall comply with the design standards, improvement standards, and document submittal requirements of this chapter unless a requirement is waived by the approving authority.
- D. The conditional use shall adhere to the additional standards specified under this article for the particular use.
- E. The approving authority may impose additional requirements to protect the public health, safety, and welfare which it deems necessary by reason of the location or other factors related to a particular application. Such requirements shall be provided for and maintained as a condition of the establishment of the use.

§ 150-35. Places of worship.

Places of worship may be permitted as a conditional use in those zones specified, provided that the use and/or structures shall adhere to the following:

- A. The use shall adhere to the minimum standards of the particular zone district or to the following standards, whichever is more restrictive:
 - (1) Minimum lot width: 150 feet.
 - (2) Minimum front yard: 20 feet.
 - (3) Minimum side yard: 20 feet.
 - (4) Minimum rear yard: 30 feet.
- B. No accessory building shall be located closer than 15 feet to any side or rear residential property line.
- C. The height of structures to be constructed may exceed the maximum height requirements of this chapter; provided, however, that the front, rear and side yard requirements set forth above shall be increased by two feet for each foot by which the height of the structure exceeds the maximum height which would be otherwise permitted by this chapter, and further provided that in no case shall any proposed structure exceed 50 feet in height.

- D. Maximum lot coverage shall be 50% unless a higher coverage is permitted by the zone district. Maximum usable floor area ratio shall be 0.30, unless higher ratios are permitted by the zone district.
- E. Parking shall be provided as required by Article IX of this chapter, except that the Planning Board may determine that additional parking be required for any ancillary or accessory uses.

§ 150-36. Public utilities.

Public utility uses, such as water towers, pumping stations, electric substations, radio towers, transmission lines, switching stations, which must be provided aboveground, may be permitted as a conditional use in those zones specified provided that the use and/or structures shall adhere to the minimum standards of the particular zone and the following:

- A. A statement is submitted setting forth the reasons that the proposed installation must be provided aboveground in a specific location and why it is necessary and convenient for the efficiency of the public utility system or for the satisfactory and convenient provision of service by the utility to the neighborhood or area in which the particular use is to be located.
- B. The design of any building in connection with such facility conforms to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property rights of the zone in which is located.
- C. Adequate and attractive fences and other safety devices will be provided. Fences, when used to enclose public utility facilities such as electrical power substations, shall be built in accordance with the requirements of the NJBPU Commissioners and the New Jersey Uniform Construction Code.²⁰²
- D. Sufficient landscaping including shrubs, trees and lawn are provided and will be periodically maintained.
- E. The public utility use and lot shall meet all the applicable minimum requirements of the district in which it is located, except that it need not have the minimum required lot area. Only one principal building will be permitted on the lot and a paved parking area is required.

§ 150-37. Motor vehicle service stations.

Motor vehicle service stations may be permitted as a conditional use in those zones specified, provided that the use and/or structures shall adhere to the minimum standards of the particular zone and the following:

- A. The site plan shall show the number and location of fuel tanks to be installed, the dimensions and capacity of each storage tank, the depth the tanks will be placed below the ground, the number and location of pumps, wash racks, lubrication bays, air hoses and any other similar equipment to be installed, the type of structure and accessory buildings to be constructed, and the number of automobiles which are to be garaged.
- B. Motor vehicle service stations shall have a lot area of not less than 20,000 square feet with a minimum frontage of 150 feet on one street. If the lot requirements for the zone are greater, they shall take precedent. No building shall be constructed closer than 50 feet to any street line or closer than 20 feet to any lot line. Where a service station abuts a residential zone along a side property line, the side yard setback for the filling station or public garage shall be increased from 20 feet to 50 feet and a twenty-foot wide planting screen approved by the Planning Board shall be provided along the entire

202.Editor's Note: See N.J.A.C. 5:23 and Ch. 136, Construction Codes, Uniform.

side property line.

- C. Driveways shall cross the sidewalks at right angles and shall not be more than 20 feet wide at any point thereof. Driveways shall be at least 20 feet from any side lot line and at least 30 feet from the intersection of street lines.
- D. The nearest boundary line of the lot or parcel of land so to be used shall be at least 100 feet measured in a straight line from the intersection of any two streets.
- E. All fuel pumps, air hoses and any other equipment used in servicing cars shall be located at least 30 feet from all street lines and 20 feet from other property lines.
- F. No vehicle shall be permitted to be standing or parked on the premises of a motor vehicle service station other than those used by the employees in the indirect or direct operation of the establishment, except for the following: no more than five during working hours and no more than three overnight. Overnight outdoor storage of more than three vehicles shall be prohibited.
- G. All fuel tanks shall be installed underground.
- H. No outdoor oil drainage pits or hydraulic lifts, racks or repair work shall be permitted.
- I. Any repair, lubrication or other similar services to motor vehicles shall be performed in a fully enclosed building. No parts or partially dismantled motor vehicle may be stored out-of-doors.
- J. Coin-operated service stations are not permitted.
- K. No auto body work shall be permitted.
- L. Illumination shall be such that no direct glare from the lights shall fall upon adjoining streets or properties.
- M. Sale of new or used cars on the premises of a service station is prohibited.
- N. Accessory goods for sale may be displayed on the pump islands and the building island only. The outside storage of oil cans and/or antifreeze and similar products may be displayed on the respective islands, if provided for in a suitable metal stand or rack.
- O. The Planning Board shall determine that the planning of the lot is properly suited to the area and in connection therewith may require adequate buffers of foliage or screen fencing, if necessary, to protect surrounding properties from any lights or noises that may be generated from the property.

§ 150-38. Elementary and secondary schools.

Public, parochial or private elementary or secondary schools, duly licensed by the State of New Jersey, attendance at which is sufficient compliance with the compulsory education requirements of the state, may be permitted as a conditional use in those zones specified provided that the use and/or structures shall adhere to the minimum standards of the particular zone and the following:

- A. Convents, rectories, social halls and similar uses which are accessory to the educational use shall be permitted.
- B. Nursery schools with an attendance of more than 25 children shall be considered educational uses and shall be subject to the provisions of this section.
- C. Nursery schools serving more than 25 children shall contain a minimum lot area of 15,000 square feet

plus 5,000 square feet for each additional 25 children or fraction thereof. A portion of the lot shall be designated for recreational uses and parking areas shall be subject to Planning Board approval. The nursery school shall meet all applicable state requirements.

- D. Where a nursery school is prepared in conjunction with an established institution, such as a place of worship, the minimum lot size shall be in accordance with the provisions applicable to the primary institution. Adequate parking facilities, which may be provided in a shared parking lot arrangement, shall be provided by the applicant, subject to Planning Board approval. A fenced playground shall also be provided by the applicant, subject to Planning Board approval.
- E. Where an elementary or secondary school alone is proposed, the minimum lot area shall be 40,000 square feet. The school shall meet all state requirements set forth under N.J.A.C. 6A:26-12. In addition, parking areas, recreational facilities and buffers shall be provided by the applicant and shall be subject to Planning Board approval.²⁰³
- F. Where an elementary or secondary school is proposed in conjunction with an established institution, such as a place of worship, the minimum lot size shall be at least the minimum required for the primary institution. Adequate parking facilities, recreation areas and buffers shall be provided by the applicant, subject to Planning Board approval. The lot shall meet all state requirements as set forth in N.J.A.C. 6A:26-12.²⁰⁴
- G. Educational uses shall be screened from adjacent residential zones or uses and/or provide fencing along such property lines as may be deemed adequate by the Planning Board.
- H. Wall and ground signs shall be permitted subject to the requirements of Articles V and VII.
- I. Parking shall be as provided in Article IX of this chapter or, in the alternative, as set forth by the Planning Board at the time of application.

§ 150-39. Child-care centers.

Child-care centers serving more than five but not more than 25 children may be permitted as a conditional use in those zones specified, provided that the use and/or structures shall adhere to the minimum standards of the particular zones and the following:

- A. A statement setting forth in full the particulars on the building and/or use is submitted.
- B. The lot upon which such use is proposed shall conform to the following standards and requirements:
 - (1) Minimum lot area: 15,000 square feet.
 - (2) Minimum front setback: as prescribed by the zone district.
 - (3) Minimum side and rear setbacks: as prescribed by the zone district.
- C. The use shall be screened from adjacent residential zones and existing residential structures.
- D. Wall and ground signs shall be permitted subject to the requirements of Articles V and VII of this chapter.
- E. Parking shall be as provided in Article IX of this chapter.

203.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

204.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- F. Any child-care center shall conform to applicable state requirements.
- G. Within the R-1 Zone District, a child-care center will be permitted only if it is accessory to, and on the same site as, an approved place of worship or an elementary or secondary school use.

§ 150-40. Community residence for developmentally disabled and shelters for victims of domestic violence.

Community residences for the developmentally disabled or shelters for victims of domestic violence housing more than six, but less than 16 persons, excluding resident staff, may be permitted as a conditional use in those zones specified, provided that the use and/or structure shall adhere to the minimum standards of the particular zone and the following:

- A. A statement setting forth the full particulars on the building and/or use as submitted.
- B. Minimum lot area: 4,000 square feet for each person, resident staff member or employee housed at the residence or shelter, but not less than the minimum lot area required for single-family homes in the zone.
- C. Minimum gross habitable floor area: 240 square feet for each person or resident staff member housed at the residence or shelter.
- D. No conditional use permit shall be granted if the number of persons (other than resident staff) residing at such community residences or shelters exceeds 50 persons or 0.5% of the population of the Borough, whichever is greater.
- E. No community residence for the developmentally disabled or shelter for victims of domestic violence shall be located upon a lot containing any other use, nor shall any structure or facility on the site be utilized to provide services for any person not residing on the site.
- F. No community residence for the developmentally disabled or shelter for victims of domestic violence shall be in excess of 2 1/2 stories in height, exclusive of basement areas. Basement areas shall not be utilized for living, sleeping or recreation areas.
- G. Each community residence for the developmentally disabled or shelter for victims of domestic violence shall submit proof of licensing by the Department of Human Services of the State of New Jersey.
- H. No community residence for the developmentally disabled or shelter for victims of domestic violence shall be located within 1,500 feet of any other community residence for the developmentally disabled or shelter for victims of domestic violence.
- I. No community residence for the developmentally disabled or shelter for victims of domestic violence shall be located in any area of heavy vehicular or pedestrian traffic congestion, or in any area where, by reason of any condition existing in proximity to the proposed community residence for developmentally disabled, the occupants of said community residence for developmentally disabled would be exposed to undue harm, danger or discomfort.
- J. Each community residence of the developmentally disabled or shelter for victims of domestic violence shall provide one off-street parking space for each resident staff member, plus one off-street parking space for each employee on the shift employing the largest number of persons, plus one off-street parking space for each three developmentally disabled persons or victims of domestic violence residing on the site, or fraction thereof. The off-street parking shall be screened from adjacent

residentially zoned properties.

- K. No building utilized for a community residence for the developmentally disabled or shelter for victims of domestic violence shall be constructed or altered so as to be inharmonious with the residential character or adjacent structures and residential zones.

§ 150-41. Mixed-use marine development.

A mixed-use development oriented to the waterfront and containing retail uses may be permitted in the MR (Marine Recreation) District, provided that such a use adheres to the zone district standards and to the following:

- A. The uses shall be limited to those permitted as-of-right or as conditional uses within the MR or WB Districts.
- B. The minimum area to be developed shall be three acres.
- C. The circulation system shall be comprehensively designed to encourage pedestrian activity and to maintain continuity with surrounding areas. An access easement of 25 feet minimum width shall be provided along all water frontage and shall be designed and furnished to provide opportunities for the passive enjoyment of waterfront views by the general public.
- D. The site design shall be arranged with consideration to the recommendations of the Master Plan for waterfront development, including maintaining continuity with the business district and the provision of amenities intended to be used and enjoyed by the general public, including plazas or widened sidewalks constructed with decorative pavement, benches, lighting, landscaping, and other furnishings which exhibit a high quality of design.
- E. If the development is staged, each building phase shall be designed as a self-sufficient entity which can be effectively integrated into subsequent phases.

§ 150-42. Mixed-use commercial/residential; mixed-use light industrial/business office/residential. [Amended 11-16-2009 by Ord. No. 16-2009; 5-26-2010 by Ord. No. 11-2010]

- A. Mixed-use commercial/residential. A mixed-use building containing commercial and residential uses may be permitted in the HBD (Historic Business District) and the CBD (Central Business District), provided that such use adheres to the minimum standards of the zone district found in Chapter 150 Attachment 1, Exhibit 5-2 (Schedule of Zoning District Requirements), and to the following specific conditions: **[Amended 2-22-2024 by Ord. No. 03-2024]**
- (1) Residential dwelling units shall be confined to the upper stories of the building. Street-level space shall be occupied by the principal uses permitted in the district and required accessory uses. A minimum of 40% of the street level frontage shall be occupied by principal uses permitted in the zone not including residential uses.
 - (2) No market-rate dwelling unit shall contain more than two bedrooms. Dens, lofts and other such areas capable of serving as bedrooms shall be construed as bedrooms. Three-bedroom affordable housing units are permitted for the purposes of meeting the requirements of § 150-30G.
 - (3) Plans for the overall use of the building shall be submitted. Any building which is in a state of disrepair or otherwise violates property maintenance standards shall be repaired or rehabilitated to conform to applicable municipal requirements.

- (4) Each dwelling unit shall have the following minimum habitable floor area:
 - (a) One-bedroom dwelling unit: 750 square feet.
 - (b) Two-bedroom dwelling unit: 950 square feet.
 - (c) Three-bedroom affordable dwelling unit: 1,000 square feet.
 - (5) Maximum permitted residential density shall be 40 dwelling units to the acre (du/acre).
 - (6) In the CBD Zone, parking for all uses (residential and nonresidential) must be provided on site; parking for residential units must comply with RSIS standards. In the HBD Zone, parking for residential uses must be provided on site and shall comply with RSIS standards. Public parking lots shall not be used for any such calculation for needed residential parking requirements in the HBD Zone. The number of spaces provided for all uses in both CBD and HBD Zones must comply with § 150-89B(1)(b) and (c).
 - (7) Any proposed development in the CBD Zone shall provide a minimum of ten-foot buffer from any property located in a single-family residential zone. The buffer shall be adequately landscaped with evergreen trees and shrubs along with deciduous trees to create a visually impervious screen. Alternatively, a six-foot-tall visually impervious fence may also be provided in lieu of full landscaping screen, although landscaping must still be provided.
- B. Mixed-use light industrial/business office/residential. A mixed-use building containing light industrial, business office and residential uses may be permitted in the LI (Light Industrial District), provided that such a use adheres to the minimum standards of the zone district and to the following specific conditions:
- (1) Residential dwelling units shall be confined to the upper stories of the building. Street-level space shall be occupied by the principal uses permitted in the district and required accessory uses. Parking for residential dwelling units may be provided on site and shall comply with RSIS standards.
 - (2) No dwelling unit shall contain more than two bedrooms. Dens, lofts and other such areas capable of serving as bedrooms shall be construed to be bedrooms.
 - (3) Plans for the overall use of the building shall be submitted. Any building which is in a state of disrepair or otherwise violates property maintenance standards shall be repaired or rehabilitated to conform to applicable municipal requirements.
 - (4) Each dwelling unit shall have the following minimal habitable floor area:
 - (a) One-bedroom dwelling unit: 750 square feet.
 - (b) Two-bedroom dwelling unit: 900 square feet.

§ 150-43. Professional offices, business offices, banks and savings and loans.

Professional offices, business offices, banks and savings and loans may be permitted in the WB (Waterfront Business) District, provided that such uses adhere to the minimum standards of the zone district and to the following specific conditions:

- A. Professional or business offices shall be located in the upper stories of buildings.

- B. Not more than 50% of the total building floor area shall be occupied by professional or business offices.
- C. A bank or savings and loan may be located within a building or development complex containing other uses permitted in the district, provided that the floor area of the bank or savings and loan does not exceed 10% of the building or development complex.

§ 150-44. Senior citizen housing.

Senior citizen housing may be permitted as a conditional use in those zones specified, provided that the use or structures shall adhere to the following:

- A. Occupancy is age-restricted to senior citizens age 55 years and older except for the superintendent as provided in Subsection G below.
- B. Senior citizen households shall qualify as low- or moderate-income as those terms are defined by the New Jersey Housing and Mortgage Finance Agency and the New Jersey Council on Affordable Housing or very-low or low-income as those terms are defined by the U.S. Department of Housing and Urban Development. The price of all the senior citizen housing units must be affordable to households at the above-referenced income levels for a period of not less than 20 years from the initial occupancy of the first unit.
- C. Minimum tract size for the location of senior citizen housing shall be 2.5 acres.
- D. Maximum density shall be 30 units per gross acre of land with no deduction for critical environmental features, such as wetlands, areas of special flood hazard, or wetlands transition areas. For the purpose of complying with this density standard, the area of access easements provided for off-street parking, as set forth below in Subsection F, may be credited as area.
- E. Building height shall be limited to five residential floors of not more than 10 feet in height on average. Stairway and elevator bulkheads and roof-mounted mechanical equipment shall be limited to 12 feet above the roof. The maximum total height shall not exceed 65 feet.
- F. Off-street parking shall be provided at the minimum ratio of 0.50 parking space for each living unit contained in the building. Each required space shall measure at least nine feet by 18 feet in size. Parking may be permitted on property adjacent to the applicant's tract, including property owned and utilized by utility companies, provided that an agreement granting permanent access has been executed by the parties.
- G. One apartment in the building may be occupied by a superintendent, supervisor or other employee and family members of that employee, for maintenance of the building. All remaining units shall be restricted to senior citizen tenants.
- H. Minimum building setbacks:
 - (1) Front yard: 25 feet.
 - (2) Rear yard: 25 feet.
 - (3) Side yard: 25 feet (unless adjacent to a public utility ROW in which case no setback is required).
- I. The Board may modify the application of Article VIII, Design Requirements and Standards for Subdivisions and Site Plans, § 150-87, Open space and recreation design standards, in light of the specialized needs of senior citizen housing.

§ 150-45. Home profession.

Home professions may be permitted as a conditional use in those zones specified, provided that the use and/or structures shall adhere to the minimum standards of the particular zone and the following:

- A. There shall be no more than two employees other than the bona fide residents of the dwelling.
- B. The portion of the dwelling utilized for home occupation shall not exceed 50% of the first floor area of the dwelling nor 25% of the total floor area of the dwelling.
- C. The occupation shall be conducted entirely within the dwelling or within an accessory building or buildings.
- D. Within any residential district, no building shall be constructed or altered so as to be inharmonious to the residential character of adjacent structures.
- E. The types of construction considered not to be residential in character include, but are not limited to, storefront-type of construction, garage doors (larger than needed for passenger vehicles or light commercial vehicles), unfinished concrete blocks or cinder block wall surfaces, metal panels, elimination of porches, and wall surfaces without doors and/or windows.
- F. Sufficient off-street parking shall be provided. The minimum number of spaces required shall be computed based upon Article IX, § 150-89B, Off-street parking, and be the sum of the applicable residential and the nonresidential components. The Board may reduce the number of spaces required if it is demonstrated that the operation of the specific nonresidential use proposed warrants a lower requirement.

§ 150-46. Wireless telecommunications towers and antennas. [Added 10-26-2005 by Ord. No. 17-2005]

- A. Antennas and towers that are not municipal facilities.
 - (1) Wireless telecommunications towers and antennas that are not municipal facilities may be conditionally permitted on nonmunicipal property in the Light Industrial Zone upon submission and approval of a site plan and conditional use permit in accordance with the regulations set forth below.
 - (2) Wireless telecommunication antennas that are not municipal facilities may be conditionally permitted on nonmunicipal property in the Light Industrial Zone upon submission and approval of a site plan and conditional use permit in accordance with regulations set forth below.
- B. Aesthetics. Towers and antennas shall meet the following requirements:
 - (1) Towers being constructed may only take the form of a flagpole (commonly known as "stealth construction"). Towers are subjected to any applicable standards of the FAA and shall be painted a neutral color so as to reduce visual obtrusiveness and to blend or not detract from other structures within a one-thousand-foot radius of tower location.
 - (2) At the tower site, the design of the buildings, related equipment and structures shall, to the extent possible, coincide with the building architecture within a one-thousand-foot radius of said buildings and structures, and use materials, colors, textures, screening, and landscaping that will blend the towers into the natural setting and surrounding buildings.
 - (3) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical

and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the architecture and color of the supporting structure so as to make antenna and related equipment as visually unobtrusive as possible.

- C. Lighting. Towers shall not be artificially lighted unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
- D. State and federal requirements. State and federal requirements must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with authority to regulate towers and antennas.
- E. Measurement. For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in Atlantic Highlands Borough irrespective of municipal and county jurisdictional boundaries.
- F. Maximum height.
 - (1) The tower shall meet the following maximum height and usage criteria:
 - (a) For a single user, up to 90 feet in height;
 - (b) For two users, up to 120 feet in height; and
 - (c) For three or more users, up to 150 feet in height.
 - (2) Proof shall be required of the applicant seeking to erect a tower for multi-use [Subsection F(1)(b) and (c) above], confirming that multi-users are under contract for the facilities and that a taller tower will not be built merely upon the speculation that another user will be found.
 - (3) A licensed New Jersey professional engineer must certify that the tower can structurally accommodate the number of shared users proposed by the applicant.
- G. Availability of suitable existing towers, other structures, or alternative technology. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the municipal agency that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the municipal agency related to the availability of suitable existing towers, other structures, and alternative technology. Evidence submitted shall demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna and may consist of any of the following:
 - (1) No existing towers or structures are located within the geographical area that meets an applicant's engineering requirements.
 - (2) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
 - (3) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - (4) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

- (5) The fees, costs or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable, including the costs of collocation or rental/leasing costs. Costs exceeding new tower development are presumed to be unreasonable.
 - (6) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
 - (7) The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wire line system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.
- H. Minimum required setback. Towers shall conform with each of the following minimum setback requirements:
 - (1) Towers shall meet the setbacks of the underlying zoning district with the exception of industrial zoning districts, where towers may encroach into the rear setback area, provided that the rear property line abuts another industrially zoned property and the tower does not encroach upon any easements.
 - (2) Towers shall be set back from the planned public rights-of-way as shown on the most recently adopted Master Street Plan of the Borough of Atlantic Highlands by a minimum distance equal to 1/2 of the height of the tower including all antennas and attachments.
 - (3) Towers shall not be located between a principal structure and a public street, with the following exceptions:
 - (a) In industrial zoning districts, towers may be placed within a side yard abutting and internal industrial street.
 - (b) On sites adjacent to public streets on all sides, towers may be placed within a side yard abutting a local street.
 - (4) A tower's setback may be reduced or its location in relation to the public street varied, at the sole discretion of the Board, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light standard, power line support device, or similar structure.
 - (5) Guy wires and accessory buildings must satisfy the minimum zoning district setback and buffer requirements.
- I. Lot size. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.
- J. Minimum separation requirement between uses. The following separation requirements shall apply:
 - (1) Separation from off-site uses/designated areas.
 - (a) Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in Subsection J(1)(b) below, except as otherwise provided.

- (b) Towers shall maintain a separation distance of 200 feet or 300% of the tower height, whichever is greater, from residential dwelling units or from lands zoned for residential use.
- (2) Separation distances between towers. Separation distances between towers shall be applicable for and measured between the proposed tower and preexisting towers or other proposed towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown below in the table of required separation distances between towers.

**Required Separation Distances
Between Wireless Communications Towers***

Tower Type	Lattice	Guyed	Monopole: 75 feet in Height or Greater	Monopole: Less than 75 feet in Height
Lattice	5,000	5,000	1,500	750
Guyed	5,000	5,000	1,500	750
Monopole: 75 feet in height or greater	1,500	1,500	1,500	
Monopole: less than 75 feet in height	750	750		750

NOTE:

* In linear feet

K. Buildings or other equipment storage.

- (1) Antennas mounted on structures or rooftops. The equipment cabinet or structure used in association with antennas shall comply with the following:
- (a) The cabinet or structure shall not contain more than 200 square feet of gross floor areas or be more than 10 feet in height. In addition, for buildings and structures which are less than 65 feet in height, the related unmanned equipment structure, if over 200 square feet of gross floor area or 10 feet in height, shall be located on the ground and shall not be located on the roof of the structure.
 - (b) If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than 10% of the roof area.
 - (c) Equipment storage buildings or cabinets shall comply with all applicable building codes.
- (2) Antennas located on towers, utility poles, or light poles. The related unmanned equipment structure shall not contain more than 200 square feet of gross floor area or be more than 10 feet in height, and shall be located in accordance with the minimum yard and buffer requirements of

the zoning district in which located and shall be screened from view of all residential properties.

§ 150-46.1. Bed-and-breakfast establishments. [Added 7-27-2011 by Ord. No. 10-2011]

- A. Permitted use. Bed-and-breakfast establishments may be permitted as a conditional use in those zones specified, provided that the use, structure and premises shall adhere to conditional use requirements set forth in this section. These requirements shall be considered minimum requirements. In the event that any applicable federal, state and local codes, including, but not limited to, building, fire, health and safety codes (hereinafter "compliance codes"), contain more stringent provisions, the more stringent provisions shall apply. Bed-and-breakfast establishments shall be considered as nonresidential development for the purposes of the Zoning Ordinance.

- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

BED-AND-BREAKFAST ESTABLISHMENT — A dwelling unit or part thereof, in which overnight accommodations and a forenoon meal are provided to transients for compensation. Such establishments shall also meet the definition and standards established by any applicable federal, state or local building, fire, health or safety code. They shall not include establishments providing long-term accommodations, that are classified as a "R-3 Bed-and-Breakfast Home Stay," rooming house or boardinghouse as defined by N.J.S.A. 55:13B-3.

OWNER-OCCUPIED — The residing in a dwelling unit of a bed-and-breakfast establishment by an individual or individuals having a controlling proprietary interest therein and meeting the requirements of owner occupancy contained in any compliance code applicable to bed-and-breakfast establishments.

- C. Principal use. A bed-and-breakfast establishment shall be considered as a principal use of property, and no more than one principal use may exist on any one lot.
- D. Physical requirements. The physical facilities of the bed-and-breakfast establishment shall be subject to the following requirements which shall be considered minimum requirements and shall also be subject to all applicable compliance codes. In the event that any applicable compliance code or this section contains more stringent provisions than the other, the more stringent provisions shall apply.
- (1) Architectural guidelines. Buildings and structures used as a bed-and-breakfast establishment are encouraged to harmonize with existing conditions of the neighborhood in which they are located, and the building and grounds thereof shall maintain a residential appearance.
 - (2) Occupancy. Bed-and-breakfast establishments shall be owner-occupied. Bed-and-breakfast establishments may have nonresident employees. The maximum occupancy per guest room shall be two adults and one minor child.
 - (3) Bathrooms. The building shall have a minimum of one bathroom dedicated to the owner occupant; one additional bathroom for each three guest rooms and one half-bath/washroom which shall be accessible from the common areas.
 - (4) Common areas. Each bed-and-breakfast establishment shall, in addition to the guest rooms, include an indoor common gathering/dining area with a minimum aggregate area of 300 square feet for the exclusive use of guests, including, but not limited to, parlors, dining rooms, libraries and solariums.
 - (5) Parking requirements. All parking for the bed-and-breakfast shall be located on site. Two parking spaces shall be provided for the owner. One parking space shall be provided for each

guest room. Parking spaces shall have a minimum dimension of nine feet by 18 feet. Parking spaces shall comply with the setback requirements for the zone in which the bed-and-breakfast establishment is located. Tandem parking shall be prohibited.

- (6) Signage. A maximum of one sign shall be permitted for a bed-and-breakfast establishment. No facade signs are permitted. Signs shall be freestanding. The sign height shall be limited to six feet. The sign area shall be limited to four square feet on each side. Signs shall not be internally lit. Lighting may be provided from an integrated shaded fixture or an external spot light aimed to illuminate the sign. Lights shall be designed so that there is no light spillage beyond the property lines and shall provide shields as necessary to accomplish this. The message to be contained on the sign shall be limited to the name of the establishment, a house or street number, phone number and associated "logo." The sign shall be located in a front yard area. The sign shall be located a minimum of six feet interior from the front property line. The sign shall not be located within a public right-of-way. The sign shall not be located within any sight triangle.
- (7) Annual inspection. Bed-and-breakfast establishments shall be licensed in accordance with the licensing provisions of the ordinance and inspected for compliance with the conditional use requirements and all other licensing requirements on at least an annual basis and upon any change in ownership.²⁰⁵
- (8) Compliance with code regulations. Bed-and-breakfast establishments shall meet all applicable compliance codes. At minimum, each establishment shall be equipped with a hardwired central alarm system for fire, smoke and carbon monoxide detection. Kitchen facilities shall meet all applicable compliance codes, including, but not limited to, Department of Community Affairs, New Jersey Administrative Code, Uniform Fire Code, Uniform Construction Code and Board of Health Code.
- (9) Meals. Bed-and-breakfast establishments shall provide forenoon meal service. Meal service shall be limited to registered guests and shall be limited to a single forenoon meal. Cooking in guest rooms shall be prohibited.
- (10) Guest registry. The bed-and-breakfast establishment shall maintain a guest registry including the following information which shall be obtained and entered at or before the time of registration:
 - (a) Name and permanent address of guests.
 - (b) Identification presented at registration (i.e., passport, driver's license, other government-issued identification document).
 - (c) Arrival and departure dates of guests.
 - (d) Vehicle make, model and license plate number for guests.
- (11) Limitation on guest stays. The length of visit for any guest shall be limited to 14 consecutive days during a single visit. A visit exceeding five consecutive days shall be considered an "extended visit." Extended visits shall not occur more often than four times per year. Visits must be separated by a minimum of three days. Extended visits must be separated by a minimum of 30 days.
- (12) Bulk zoning requirements. The bulk zoning requirements for bed-and-breakfast establishments

205. Editor's Note: See also Ch. 211, Art. II.

shall be the same as those for other uses in the zone in which it is located with the following additional requirements:

- (a) No lot shall have an area less than 22,000 square feet.
 - (b) Each lot shall have perimeter fencing or landscape screening a minimum of five feet in height along property lines contiguous to residential lots, uses or zones.
 - (c) The lot must have frontage on a street which is not a limited-access roadway, one-lane roadway or dead-end roadway.
- (13) Site plan requirements and standards. Bed-and-breakfast establishments shall be required to obtain site plan approval to insure compliance with the applicable standards as set forth in the Site Plan Ordinance and these conditional use requirements. Site plans shall be based upon a certified survey and sealed architectural plans. The applicant shall provide information sufficient to establish the availability of public utilities and other necessary services.

ARTICLE VII
General Zoning Provisions

§ 150-47. Purpose.

The purpose of these provisions is to provide direction regarding the administration and application of development requirements and restrictions within the Borough's zone districts. Deviation from the standards of this article will only be permitted when a variance is granted pursuant to N.J.S.A. 40:55D-70.

§ 150-48. Provisions of other chapters.

Any restrictions or requirements with respect to buildings or land, which appear in other ordinances of the Borough or are established by law and which are greater than those set forth herein, shall take precedence over the provisions of this chapter.

§ 150-49. Nonconforming uses, buildings and structures.

Except as otherwise provided in this chapter, the lawful use of the land or a building existing at the date of the adoption of this chapter may be continued although such use or building does not conform to the regulations specified by this chapter for the zone in which such land or building is located; provided, however, that:

- A. Reduction of use. No nonconforming lot shall be further reduced in size.
- B. Enlargement of use. No nonconforming building or structure shall be enlarged, extended or increased unless such enlargement, extension, or increase is conforming.
- C. Expansion of use. No nonconforming use may be expanded.
- D. Abandonment of use.
 - (1) A nonconforming use shall be deemed to be abandoned where there is: 1) an intention to abandon, as well as 2) an external act (or omission to act) by which such intention is carried into effect.
 - (2) It shall be prima facie evidence that a nonconforming use has been abandoned when there occurs a cessation of such use on the part of a tenant or owner for a continuous period of at least one year. When a nonconforming use has been abandoned, such use shall not thereafter be reinstated and any structure shall not thereafter be reoccupied, except in conformance with this chapter.
- E. Restoration of a structure.
 - (1) If any nonconforming structure shall be more than partially destroyed, then the structure may not be rebuilt, restored or repaired, except in conformity with this chapter.
 - (2) Destruction to the extent that rebuilding, repair or restoration requires removal or demolition of any remaining portions of the damaged part of the structure such that the only major components of the original structure utilized in such building, repair or restoration are the foundation or exterior walls shall be prima facie evidence that the structure has been more than partially destroyed.
 - (3) Nothing in this chapter shall prevent the strengthening or restoring of any portion of a structure which has been declared unsafe by the Construction Official.

- F. Certification of preexisting nonconforming uses, buildings and structures. Upon application, the Administrative Officer (Borough Administrator) or the Planning Board may issue a certificate in accordance with Article III, § 150-10D(3), certifying the legality of a preexisting nonconforming use, building, or structure.
- G. Alterations and additions. A nonconforming building may not be altered so as to increase in any manner the degree of nonconformance.
- H. Reversion. No nonconforming use shall, once changed into a conforming use, be changed back to a nonconforming use.
- I. Lots and structures.
 - (1) A nonconforming lot may not be used for any purpose unless:
 - (a) The proposed use and all existing uses is/are permitted principal or accessory use(s).
 - (b) The lot conforms to the minimum lot area requirements of this chapter.
 - (c) Other than minimum lot area, the lot conformed to the zoning standards in effect immediately prior to the adoption of this chapter.
 - (2) A nonconforming building or structure may not be enlarged, extended, increased in height, width or depth; moved or relocated; or modified in such a way so as to increase habitable or usable space, number of dwelling units or number of bedrooms; unless it is changed to conform to the requirements of this chapter except that an existing use (principal or accessory) may be enlarged, extended or added to provided:
 - (a) The proposed use and all existing use(s) is/are permitted principal or accessory use(s).
 - (b) The enlargement, extension or addition conforms to all requirements of this chapter and will not result in the creation of any nonconformity related to the lot and the aggregate of all structures or building.
 - (3) Principal or accessory buildings or structures may not be constructed on nonconforming lots and/or on lots which contain a nonconforming principal building or structure unless:
 - (a) Existing and proposed buildings or structures will be used for a permitted principal or accessory use.
 - (b) The lot conforms to the minimum lot area requirements of this chapter.
 - (c) Other than lot area, the lot conforms to the zoning standards in effect immediately prior to the adoption of this chapter.
 - (d) The new structure or building conforms to all requirements of this chapter and will not result in the creation of any nonconformity related to the lot and the aggregate of all buildings or structures.
- J. Prior approved construction. Nothing herein contained shall require any change in plans, construction or designated use of a building for which a building permit has been hereto before issued and the construction of which shall have been diligently prosecuted within three months of the date of such permit, and the ground story framework of which, including the second tier of beams, shall have been completed within six months of the date of the permit, and which entire building shall be completed

according to such plans as filed within one year from the date of the adoption of this chapter.

- K. District changes. Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the provisions of this chapter shall also apply to any nonconforming uses existing therein or created thereby.

§ 150-50. Corner lots.

- A. On all corner lots, the depth of all yards abutting on streets shall not be less than the minimum front yard depth required.
- B. Lot lines of corner lots, that are coexistent with sidelines of abutting lots, shall be considered sidelines.
- C. Lot lines of corner lots, that are coexistent with rear lines of adjoining lots, shall be considered rear lines.
- D. Lot lines of corner lots, that are coexistent with lot lines of adjoining corner lots, shall be considered sidelines.
- E. Sections B, C, and D notwithstanding, each corner lot must maintain a rear yard setback for at least one yard area other than a front yard.
- F. Each street frontage of a corner lot shall conform to the minimum required frontage for a corner lot in the applicable zone district as specified in the Schedule of Zoning District Requirements, Exhibit 5-2.²⁰⁶

§ 150-51. Sight triangle at intersections.

Unless more stringent regulations are provided by other provisions of this chapter, at the intersection of two or more streets, no hedge, fence, screening strip or wall higher than 30 inches above curb level, nor any obstruction to vision, other than a post not exceeding one foot in diameter, shall be permitted on any lot within the triangular area formed by two intersecting street lines bounding said lot, or the projection of such lines, and by a line connecting a point, on each line located 25 feet from the intersection of the street lines.

§ 150-52. Frontage on improved street required.

Every principal building shall be built upon a lot with frontage upon a public street improved to meet the municipal requirements or for which such improvement has been guaranteed by the posting of a performance guarantee pursuant to this chapter unless relief has been granted under the provisions of N.J.S.A. 40:55D-36.

§ 150-53. Yard areas.

- A. No yard or other open space provided around any building for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other buildings, and no yard or other open space on one lot shall be considered as providing a yard or open space for a building on any other lot.
- B. All yards facing on a public street shall be considered front yards and shall conform to the minimum

²⁰⁶Editor's Note: Exhibit 5-2 is included at the end of this chapter.

front yard requirements for the zone in which located except:

- (1) Lots with frontage on more than one street, which are not corner lots, may have a front and rear yard designated by the owner subject to:
 - (a) If the lot contains a principal structure, the front will be considered the direction the principal structure faces.
 - (b) If the lot does not contain a principal structure and only one street frontage conforms to lot frontage requirements, the yard abutting the conforming street frontage will be considered the front yard.
 - (2) The designated rear yard of a lot with frontage on more than one street shall be considered a rear yard for the purposes of this chapter, except for the area within the depth of the required minimum front yard determined as follows:
 - (a) Not less than the lesser of the setback of existing principal structures on any adjacent lots (but not less than 50% of the minimum front yard required by the zone district).
 - (b) Not more than the minimum front yard required by the zone district.
- C. Every part of a required yard shall be open and unobstructed from its lowest level to the sky, except for the ordinary projections allowed by the State Uniform Construction Code²⁰⁷ including, but not limited to, sills, belt courses, chimneys, flues, buttresses, ornamental features, and eaves; provided, however, that none of the aforesaid projections shall project into the minimum required yards more than 24 inches, unless otherwise permitted by this chapter.
- D. Setback requirements. The provisions of the Schedule of Zoning District Requirements, Exhibit 5-2,²⁰⁸ notwithstanding, the following overall setbacks shall be in effect:
- (1) No structure shall be located within 30 feet of the right-of-way of State Highway No. 36.
 - (2) No structure shall be located within 50 feet of the mean high tide line of Sandy Hook Bay or of any area fronting thereon which is reserved for public beach purposes, except as specifically provided in the regulations.
 - (3) No structure shall be located within 50 feet of any natural waterway unless protective measures are taken, which, in the opinion of the Borough Engineer, will not increase the likelihood of silting or flood damage at any point along said waterway.

§ 150-54. Accessory buildings and structures.

Unless otherwise specified in this chapter on the zone district schedule, accessory buildings and structures shall conform to the following regulations as to their locations on the lot:

A. Location of accessory buildings.

- (1) An accessory building attached to a principal building shall comply in all respects with the zoning requirements for the principal building.
- (2) Detached accessory buildings shall not be located in a front yard.

²⁰⁷.Editor's Note: See N.J.A.C. 5:23 and Ch. 136, Construction Codes, Uniform.

²⁰⁸.Editor's Note: Exhibit 5-2 is included at the end of this chapter.

- (3) Detached accessory buildings shall comply with the Schedule of Zoning District Requirements, Exhibit 5-2.²⁰⁹
- B. Distance from principal building. No detached accessory building, in any residential zone, shall be less than five feet from a principal building.
- C. Sequence of construction. No accessory building shall be constructed before the principal building.
- D. Same lot. Accessory buildings must be located on the same lot as the principal use to which they are accessory.
- E. Sheds. For sheds the following regulations shall apply: No more than one shed per lot, and not to exceed 150 square feet, and not to exceed 12 feet in height.
- F. Driveway/walkway. Within a residential zone district, an entry driveway or a walkway may cross any yard area except that no driveway shall be within five feet of a side lot line or a rear lot line. Within a nonresidential zone district, entry driveways and walkways may cross any yard area; however, other than crossing yards, driveways shall adhere to the yard requirements for accessory structures. Walkways in a nonresidential zone may be located in a yard area but they shall not encroach into any required buffer.
- G. Pools. The following regulations shall apply to installation of pools:
- (1) No pool may be installed or altered until a permit has been issued.
 - (2) Pool walls must be kept 10 feet from side and rear yard lines.
 - (3) The pool must be equipped to be completely emptied. The method of disposal of wastewater (dry well, tapped to sewer line, etc.) must be approved prior to issuance of any permit.
 - (4) All electrical installations must be inspected and approved pursuant to the National Electrical Code.
 - (5) An application must be accompanied by a clear copy of a property survey showing the exact location of the pool, distances from all property lines and structures, and location of the filter.
 - (6) A properly installed four-foot fence, with self-locking gates, must be installed around all pools unless, for aboveground pools, a deck with an approved swing-up and self-locking stair is provided.
 - (7) No pool can be filled until a certificate of use has been issued.
- H. Porch, deck, patio. A porch, deck, patio, or similar structure designed to adjoin or as part of the principal building shall in all cases conform to the yard requirements for the principal building; except, where the structure has no roof and is constructed not more than six inches above grade, it shall adhere to the yard requirements for an accessory structure.
- I. Rooftop decks. The following regulations shall apply to the construction and commercial use of rooftop decks located on any building or structure other than detached single-family and two-family residential dwelling units: **[Added 10-10-2018 by Ord. No. 12-2018]**
- (1) The rooftop deck shall receive site plan approval prior to its construction.

209. Editor's Note: Exhibit 5-2 is included at the end of this chapter.

- (2) The rooftop deck shall be surrounded by a safety railing or parapet with a minimum height of four feet from the deck surface, which shall be designed and constructed in accordance with all applicable building, fire, health and safety codes and regulations. The design must also be such that the use of the rooftop deck area is screened from view of adjacent properties.
- (3) The number of persons permitted upon the rooftop deck at any given time shall not exceed that which is permitted by applicable building, fire, health and safety codes and regulations, which number shall be prominently posted at each point of access and as may be otherwise required by the applicable code or regulation.
- (4) The maximum rooftop deck coverage shall not exceed 50% of the total square footage of the roof area, and such coverage shall be reduced below 50% if required in order to comply with applicable building, fire, health and safety codes or regulations.
- (5) The dimensional area occupied by any furnishings, equipment or structures for rooftop deck use (excluding mechanical, heating, air-conditioning, HVAC, electrical and other mechanical equipment required by building, fire, health and safety codes and regulations) shall not exceed 50% of the total square footage of the roof area.
- (6) All rooftop deck furnishings, equipment and structures (excluding mechanical, heating, air-conditioning, HVAC, electrical and other mechanical equipment required by building, fire, health and safety codes and regulations) shall be set back a minimum of 15 feet from the roof edge of the side of a building or structure contiguous to a public street or right-of-way and five feet from the roof edge of all other sides of a building or structure.
- (7) Any proposed rooftop deck lighting shall be properly shielded so that the light intensity is 0 footcandles at the property line of the property on which the rooftop deck is located.
- (8) Rooftop decks may provide for shade or protection from inclement weather. Such protective devices shall not result in the enclosure of more than 50% of the sides of the rooftop deck area.
- (9) Use of rooftop decks shall be limited to the hours of 10:00 a.m. to midnight.

§ 150-55. Nonapplicability to underground utilities and essential services.

The provisions of this chapter shall not apply to customary underground essential services as herein defined, except that all facilities such as pumping stations, repeater stations and electric substations, which require a building aboveground, or any other aboveground appurtenance of any type more than 40 feet high, shall require approval as a conditional use subject to the provisions of this chapter.

§ 150-56. Contiguous lot ownership.

Where two or more lots, created by the filing of a map pursuant to the Map Filing Law²¹⁰ prior to establishment of the Planning Board, have any contiguous lines and are in single ownership and one or more of the lots is nonconforming in any aspect, the lots involved shall be considered to be an undivided parcel for the purposes of this chapter and no portion of said parcel shall be conveyed or divided except through the filing of an approved subdivision in accordance with the provisions of this chapter.

§ 150-57. Height limitations.

²¹⁰Editor's Note: See N.J.S.A. 46:26B-1 et seq.

- A. Height limitations. No structure shall extend higher than the limit provided in each zone for building height. For the purposes of calculating this height limitation, the bottommost cellar of a building shall not be included as a story, provided that the building otherwise satisfies the building height requirements of this chapter. **[Amended 4-22-2021 by Ord. No. 07-2021]**
- B. The height limitations created hereunder shall not apply to spires, belfries, cupolas, parapets, walls or cornices not used for human occupancy and extending not more than five feet above the building height limit.
- C. The height limitations of this chapter shall apply to water tanks, chimneys, ventilators, skylights, HVAC equipment, stair towers, elevator towers, antennae attached to a building and similar appurtenances usually carried above roof level, except:
 - (1) Such features may, subject to the limitations of this section, exceed the height limitations of this chapter if they do not exceed, in aggregate coverage, 10% of the roof area.
 - (2) In the CBD, HBD, HB, WB Zone Districts, elevator towers attached to buildings may exceed height limitations by 15 feet; stair towers, antennae, chimneys, water tanks, ventilators, skylights, HVAC equipment and other appurtenances may exceed height limitations to a maximum of 10 feet. These elements and/or other appurtenances are required to appear on all plans presented to and approved by the Planning Board. **[Amended 11-10-2004 by Ord. No. 16-2004]**
 - (3) In the R1, R2, O-R, RTH, MF1, MF2, MR, and SC Zone Districts, roof appurtenances may exceed height limitations by five feet.
- D. Freestanding, noncommercial radio and television antennae and flagpoles may exceed the height limits created hereunder by not more than 10 feet. **[Amended 11-10-2004 by Ord. No. 16-2004]**
- E. Foundation height. The exposed portion of the foundation of buildings or structures shall not exceed two feet above the highest preexisting grade or, in the case of property that has received approval of the Planning Board pursuant to an application for development, the finished grade shown on the approved plans. If the structure is in the floodplain, this subsection shall not apply. **[Added 3-24-2010 by Ord. No. 05-2010]**

§ 150-58. Riparian grants.

Whenever a person acquires title to the land under water adjacent to his property by virtue of a riparian grant from the State of New Jersey, then the grant area shall automatically be zoned MC (Marine Conservation) or MR (Marine Recreation) as indicated on the Zone Map.²¹¹ Any part of a grant not filled, graded or stabilized pursuant to a valid construction permit shall not be applicable to meeting the minimum lot area for the governing zone nor shall it be used as the basis for calculating the permitted usable floor area ratio.

§ 150-59. Solid waste and recyclable storage for single- and two-family homes.

- A. Solid wastes and recyclables from single- and two-family homes, if stored outdoors, shall be placed in metal or plastic receptacles with tight-fitting covers.
- B. Such receptacles shall not be stored or placed within any front yard area prior to the time at which

211.Editor's Note: The Zoning Map is on file in the Borough offices.

materials are permitted to be placed at the curblines for collection. Such receptacles may be stored in either rear or side yard areas, but if stored within a side yard area, they shall be screened from view of adjoining properties and street areas with planting or fencing.

§ 150-60. Outdoor storage of materials.

No nonresidential use shall store materials of any kind outdoors in any district except in connection with the construction of a structure to be erected on the premises unless specifically permitted elsewhere in this chapter.

A. Construction materials and equipment may be stored temporarily at the construction site where their use is necessary, provided that:

- (1) No such material or equipment shall be stored prior to issuance of the pertinent construction permit.
- (2) All equipment and materials shall be removed from the site within 30 days after the issuance of a conditional certificate of occupancy. Such conditional certificate of occupancy shall become invalid after 30 days unless this provision has been complied with. No permanent certificate of occupancy shall be issued until this provision has been complied with.

§ 150-61. Outdoor display of goods.

- A. Except during garage, estate or auction sales conducted pursuant to a permit issued by the Borough, no goods shall be displayed for sale in any residential zone district.
- B. Business uses shall not permanently display goods for sale outdoors except where the goods displayed are the merchandise of a business included within a structure located on the site and the display is in accordance with a site plan approved by the Planning Board.
- C. Temporary sales and outdoor display of goods may be permitted where the goods displayed are the merchandise of a business included within a structure located on the site. No business shall hold more than five such sales per year, nor shall any one sale exceed one week in duration.
- D. Uses such as flea markets where two or more concessionaires, proprietors or businesses display goods out-of-doors shall not be permitted in any zoning district within the Borough, except temporary sales operated by nonprofit or charitable groups may be permitted where the goods displayed are on a site which is already developed as a principal use of the nonprofit group. No nonprofit group shall hold more than two such sales per year, nor shall any one sale exceed four days in duration.
- E. Goods for sale, displayed or stored outdoors, in accordance with an approved site plan, shall not be located closer than 25 feet to any street right-of-way or 15 feet to any side or rear line, except in conjunction with temporary sidewalk or other types of outdoor sales.
- F. Temporary sales of Christmas trees may be permitted beginning the day after Thanksgiving in November through the month of December in business zones and on developed sites occupied by nonprofit or charitable groups. Such sales shall be in accordance with a permit issued by the Zoning Officer. No permit shall be issued unless adequate off-street stopping space or maneuvering space for vehicles of customers can be provided and it can be demonstrated that the temporary use will not interfere with other uses on the site. Each such use shall be permitted to have one freestanding sign, no larger than 12 square feet in area, no closer to any property line than 10 feet, and not exceeding eight feet in height. Such signs shall be temporary and shall be removed from the property on which

the sales are being conducted no later than December 31.

§ 150-62. Appearance of dwellings with home profession or home occupation and building design in O-R Office Residential District.

- A. Within any residential district, no building with a home professional office or home occupation shall be constructed or altered so as to be inharmonious to the residential character of adjacent structures.
- B. The types of construction not considered to be residential in character include, but are not limited to, storefront type of construction, garage doors (larger than needed for passenger vehicles or light commercial vehicles), unfinished concrete blocks or cinder block wall surfaces, metal panels, elimination of porches and wall surfaces without doors and/or windows.
- C. Within the O-R (Office Residential) District, nonresidential building design shall be compatible with the residential character of the area. Nonresidential reconstructions, expansions, alterations or new construction shall be compatible with residential architecture in the district and adjoining areas in terms of roof form; building height, width and proportion; window and door treatment; and roof and exterior finish materials.

§ 150-63. Storage of boats and recreational vehicles.

- A. Boats or parts, section, pieces or appurtenances of boats shall not be placed or stored on any lot situated in the R1 or R2 Zone, except:
 - (1) Not more than one boat, not longer than 26 feet, may be placed or stored on any lot, except not more than two boats, not longer than 26 feet, may be placed or stored on residential lots of at least 25,000 square feet in area, with direct access to navigable water.
 - (2) No boat may be placed or stored in a front yard.
 - (3) Any boat placed or stored on a lot must be the property of the resident owner or resident tenant of the lot.
 - (4) Small boats under 18 feet in length such as rowboats, canoes, kayaks, or dinghies, the propelling force of which is limited to oars, sails or paddles (not motor driven), may be parked or stored in the open upon any lot in a residential zone, provided that they do not exceed in number the number of persons who are members of the family and who reside in the premises subject, however, to the above restrictions as to the portions of the lot upon which boats may be parked or stored.
- B. Boats or parts, sections, pieces or appurtenances of boats may not be placed or stored on any lot situated in the LI, WB, HB, O-R, CBD, SC, HBD, RTH, MF1 or MF2 Zone Districts except in accordance with a site plan approved by the Planning Board or, for lots, occupied by only single-family residential uses, in accordance with the provisions of Subsection A above. Temporary storage of boats in conjunction with the operation of a marina between October 1 and June 15 is permitted in the WB and MR Districts in conjunction with a site plan approved by the Planning Board.
- C. Recreation vehicles or parts, sections, pieces or appurtenances of recreational vehicles shall not be parked overnight, stored or placed on any lot situated in a residential zone, except:
 - (1) Not more than one recreational vehicle may be parked overnight, stored or placed on any lot in a residential zone.

- (2) In the R-1, R-2 and R-3 Residential Zones, a recreational vehicle may be parked overnight, stored or placed only in a rear yard no closer than 10 feet to any property line. **[Amended 2-26-2003 by Ord. No. 4-2003]**

- D. Recreation vehicles or parts, sections, pieces or appurtenances of recreational vehicles may not be parked overnight, stored or placed on any lot in the O-R, HBD, CBD, LI, MR, RTH, SC, MF1, MF2, WB, or HB Zone Districts except in accordance with a site plan approved by the Planning Board or, for lots occupied by only single-family residential uses, in accordance with Subsection C.

§ 150-64. Commercial vehicle storage.

- A. No commercial motor vehicle having a rated maximum gross vehicle weight (GVW) in excess of 8,000 pounds or having more than two axles shall be parked or stored overnight on any occupied property which is primarily used for residential purposes or on any vacant property in a residentially zoned area, except for vehicles engaged in construction, parked or stored on an active construction site.
- B. Not more than one motor vehicle with commercial motor vehicle registration, having a rated maximum gross vehicle weight (GVW) of 8,000 pounds or less, shall be parked or stored overnight on any occupied property which is primarily used for residential purposes or on any vacant property in a residentially zoned area, except for vehicles engaged in construction, parked or stored on an active construction site. This provision shall not apply to passenger automobiles with commercial motor vehicle registration.

§ 150-65. Wetlands permit.

No building, structure or use shall be permitted within areas defined as wetlands or wetlands transition areas by the New Jersey Wetlands Act of 1970 or the New Jersey Freshwater Wetlands Protection Act of 1987,²¹² except in accordance with a permit issued under the Act.

§ 150-66. Noncommercial radio and television antennae.

- A. Regulations: nonresidential zones.
- (1) In nonresidential zones, antenna shall be permitted as an accessory structure to a permitted principal use on the same lot.
- (2) Any antenna mounted on the ground or on a structure not attached to a building shall adhere to the following design standards:
- (a) Maximum height shall not exceed seven feet above the highest point of the principal building on the site.
 - (b) The antenna shall be designed in such a manner that it not present any overturning movement to dislodge said antenna from its mounting.
 - (c) The antenna mounting and structure configuration shall be designed and certified for safety purposes by a New Jersey licensed professional engineer.
 - (d) The antenna shall be located within the rear yard area and shall adhere to the setback or buffer requirements applicable to accessory structures.

212.Editor's Note: See N.J.S.A. 13:19A-1 et seq.

- (3) Antenna mounted on or attached to a building shall be required to meet the following design standards:
 - (a) Maximum height shall not exceed seven feet above the highest point of the building.
 - (b) The antenna shall be designed in such a manner that it not present any overturning movement to dislodge the antenna from its mounting.
 - (c) The antenna mounting and structural configuration shall be designed and certified for safety by a New Jersey licensed professional engineer.

B. Regulations: Residential Zone District.

- (1) Permitted districts: antennas shall be permitted in a residential district as an accessory structure to a principal residential building on the same lot, subject to the provisions of this subsection.
- (2) Application. Any person desiring to construct and operate an antenna shall, prior to such construction and operation, apply for a development permit which application shall include the following:
 - (a) The proposed antenna, proposed plantings and fencing or other barriers to provide protection and screening.
 - (b) The height of the proposed antenna to its highest point including support structure.
 - (c) One set of construction drawings sealed and approved by a New Jersey licensed professional engineer.
 - (d) The name and address of the applicant and owner of the property on which the earth terminal is to be located.
 - (e) The tax lot and block numbers and the property lines of the property as disclosed on the Borough Tax Map.
 - (f) All existing buildings and structures and all accessory buildings and structures on the property.
 - (g) The tax lot and block numbers and the property lines of all properties as disclosed on the Borough Tax Map within 200 feet from the property.
- (3) Design standards. All antennas shall fully comply with the following standards:
 - (a) An antenna shall not be closer to any property line than the height of the antenna and may not be located in a buffer area.
 - (b) The antenna shall adhere to the setback requirements applicable to accessory structures within the particular district as set forth in this chapter.
 - (c) The antenna shall be mounted to a supporting structure in a manner to prevent its movement or dislocation due to wind, ice or other environmental event.
 - (d) The height of the antenna to its highest point and supporting structure shall not be more than seven feet above the principal building on the site.
 - (e) All wiring or connecting cables between the antenna and the principal building shall be

buried underground with grounding and bonding.

- (f) An antenna shall be located as to be effectively screened or obscured from view by natural plants, trees or other suitable sight barriers, which shall be maintained in good condition, in order to minimize visibility from any adjacent property or public street.
- (g) Only one antenna structure shall be permitted on the applicant's property.
- (h) An antenna shall only be used by the principal building on the applicant's property. Any connection, by cable or otherwise, to adjacent properties shall constitute a violation of yard and setback requirements.

§ 150-67. Performance standards.

- A. Compliance a condition of approval. As a condition of approval and the continuance of any use, occupancy of any structure, and operation of any process or equipment, the applicant shall supply evidence, satisfactory to the Planning Board, or to its designated representative, that the proposed use, structure, process, or equipment will conform fully with all of the applicable performance standards.
 - (1) As evidence of compliance, the Planning Board may require certification of tests by appropriate government agencies or by recognized testing laboratories, any costs thereof to be borne by the applicant.
 - (2) The Planning Board may require that specific types of equipment, machinery, or devices be installed, or that specific operating procedures or methods be followed, if the government agencies or testing laboratories examining the proposed operation shall determine that the use of such specific types of machinery, equipment, devices, procedures or methods are required in order to assure compliance with the applicable performance standards.
 - (3) Permits and certificates required by other government agencies shall be submitted to the Planning Board as proof of compliance with applicable codes.
 - (4) If appropriate permits, tests and certifications are not or cannot be provided by the applicant, then the Planning Board or Administrative Officer (Zoning Officer) may require that instruments and/or other devices, or professional reports or laboratory analysis be used to determine compliance with the following performance standards for an existing or proposed use and the cost thereof shall be borne by the owner, applicant, or specific use in question.
 - (5) Conditional permit.
 - (a) In the event a determination cannot be made at the time of application that a proposed use, process or piece of equipment will meet the standards established in this section, the Planning Board may issue or may recommend issuance of a conditional permit. The conditional permit would be based on submission of evidence that the proposed use, process or equipment will meet the standards established herein after completion or installation and operation.
 - (b) Within 30 days after a conditional permit is granted, a certificate of occupancy shall be applied for and satisfactory evidence shall be submitted that all standards established by this section have been met.
- B. Applicability and enforcement.

(1) Applicability.

- (a) Prior to construction and operation. Any application for development or building permit for a use which shall be subject to performance standards shall be accompanied by submissions, attachments, certifications as required by this section, and a sworn statement filed by the owner of the subject property or the operator of the proposed use that said use will be operated in accordance with the performance standards set forth herein.
 - (b) For existing structures. Any existing structure or use which is after the effective date of these regulations, allowed to deteriorate or is modified so as to reduce its compliance with these standards will be deemed to be in noncompliance and to constitute a violation.
- (2) Continued compliance. Continued compliance with performance standards is required and shall be enforced by the Construction Official or Administrative Officer (Zoning Officer).
- (3) Termination of violation. All violation shall be terminated within 30 days of notice or shall be deemed a separate violation for each day following and subject to fines as set forth herein.
- (4) Violation inspection. Whenever, in the opinion of the Construction Official or Administrative Officer (Zoning Officer), there is a reasonable probability that any use or occupancy violates the regulations of this article, they are hereby empowered to employ a qualified technician or technicians to perform investigations, measurements and analyses to determine whether or not the regulations of this section are being violated. In the event that a violation is found to exist, the violator shall be liable for the reasonable fees of the technicians employed to perform such investigations, measurements, and analyses.

C. Noise.

(1) Noise regulations.

- (a) The definitions contained in the Noise Control Regulations of the New Jersey Department of Environmental Protection. (N.J.A.C. 7:29-1.1 et seq.) are hereby incorporated by reference without being set forth in full with regard to this section.
- (b) No person shall cause, suffer, allow or permit, nor shall any application for development be approved which produces sound in excess of the standards listed below when measured at any location outside of the lot on which the use or source of sound is located:

[1] Continuous airborne sound which has a sound level in excess of 50 dBA; or

[2] Continuous airborne sound which has an octave band sound pressure level in decibels which exceeds the values listed below in one or more octave bands; or

Octave Band Center Frequency (Hz) 31.5	Octave Band Sound Pressure Level (dB)
63	86
125	71
250	61
500	53

Octave Band Center Frequency (Hz) 31.5	Octave Band Sound Pressure Level (dB)
1,000	48
2,000	45
4,000	42
8,000	40

[3] Impulsive sound in air which has an impulsive sound level in excess of 80 decibels.

[4] The provisions of this section shall not apply to:

- [a] Agriculture.
- [b] Bells, chimes or carillons while being used in conjunction with religious services.
- [c] Commercial motor vehicle operations.
- [d] Emergency energy release devices.
- [e] Emergency work to provide electricity, water, or other public utilities when public health or safety are involved.
- [f] National Warning System (NAWAS) signals or devices used to warn the community of attack or imminent public danger, such as flooding or explosion. These systems are controlled by the New Jersey Civil Defense and Disaster Control Agency.
- [g] Noise of aircraft flight operations.
- [h] Public celebrations.
- [i] Public roadways.
- [j] Stationary emergency signaling devices.
- [k] The unamplified human voice.
- [l] Use of explosive devices. These are regulated by the New Jersey Department of Labor and Industry under the 1960 Explosives Act (N.J.S.A. 21:1A-128 et seq.).²¹³

D. Air pollution. No substance shall be emitted into the atmosphere in quantities, which are injurious to human, plant or animal life or to property, or which will interfere unreasonably with the comfortable enjoyment of life and property anywhere in the municipality. All provisions of the New Jersey Air Pollution Control Code, as amended and as augmented, and all the following provisions stated, whichever shall be more stringent, shall be complied with.

(1) Smoke. In any zone, no smoke, the shade or appearance of which is darker than No. 1 of the

213. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Ringelmann Smoke Chart, shall be emitted into the open air from any incinerator or fuel-burning equipment; provided, however, that smoke emitted during the cleaning of a fire box or the building of a new fire, the shade or appearance of which is no darker than No. 2 of the Ringelmann Smoke Chart, may be permitted for a period or periods aggregating no more than three minutes in any 30 consecutive minutes.

(2) Solid particles.

- (a) In any residential zone, no discharge of solid particles through a stack, duct or vent shall be permitted that is greater than 50% of the allowable emission in pounds per hour established by Chapters 7 and 8 of the New Jersey Air Pollution Control Code.
- (b) In any other zone, except industrial zones, the allowable discharge shall be 75% of the allowable emission permitted by the New Jersey Air Pollution Control Code.
- (c) In the industrial zone, the allowable discharge shall be the allowable emission permitted by the New Jersey Air Pollution Control Code.
- (d) No open burning shall be permitted in any zone.
- (e) All incinerators shall be approved by the State Department of Environmental Protection.
- (f) Any road, parking area, driveway, truck loading or unloading station, or any other exterior area having a substantial movement of vehicles or equipment shall be paved or otherwise stabilized during construction sufficient to prevent the generation of dust from the movement of such vehicles or equipment.

(3) Odors. In any zone, no odorous material may be emitted into the atmosphere in quantities sufficient to be detected without instruments. Any process, which may involve the creation or emission of any odors, shall be provided with a secondary safeguard system, so that control will be maintained. Table 1 (Odor Thresholds in Air) in Part 1 (Odor Thresholds for 53 Commercial Chemicals) of Research on Chemical Odors, copyrighted October, 1968, by the Manufacturing Chemists Association, Inc., Washington, D.C., shall be used as a guide in determining quantities of offensive odors.

E. Liquid waste. No liquid waste shall be discharged into any watercourse, storm drain or sewage collection and disposal system, nor into any ground sump, any well or percolation area, except in accordance with plans approved by the Municipal Engineer, and where required by the New Jersey Department of Environmental Protection.

F. Industrial waste. No industrial waste shall be discharged into the public sewage collection and disposal system unless the appropriate officials of the sewer utility shall have first investigated the character and volume of such waste and shall have certified that it will accept the discharge of the waste material into the system. The applicant shall comply with any requirements of the utility, including the pretreating of such wastes, control of pH and other methods of improving such waste prior to discharge, as a condition to acceptance by the utility.

G. Solid waste. All uses in the municipality shall:

- (1) Assume full responsibility for adequate and regular collection and removal of all refuse, except if the municipality assumes the responsibility.
- (2) Comply with all applicable provisions of the Air Pollution Control Code.

- (3) Comply with all provisions of the State Sanitary Code, Chapter 8, Refuse Disposal, Public Health Council of the State Department of Environmental Protection.
 - (4) Permit no accumulation on the property of any solid waste, junk, or other objectionable materials.
 - (5) Not engage in any sanitary landfill operation on the property, except as may be permitted by other municipal codes and ordinances.
- H. Radiation. All use of materials, equipment or facilities, which are or may be sources of radiation, shall comply with all controls, standards and requirements of the U.S. Atomic Energy Act of 1965, as amended, and any codes, rules or regulations promulgated under such Act, as well as the New Jersey Radiation Protection Law, N.J.S.A. 26.2D et seq., as amended, whichever is more stringent.
- I. Fire and explosion hazards. All activities shall be carried on only in buildings classified as fireproof by the building code of the municipality,²¹⁴ and as determined by the Fire Department. The operation shall be conducted in such a manner and with such precautions against fire and explosion hazards as to produce no explosion hazard as determined by the New Jersey Inspection Bureau of Fire Prevention to a use on an adjacent property and must conform to the rules and regulations of the most recent adopted edition of the Fire Prevention Code of the National Board of Fire Underwriters and the Fire Department.
- J. Vibration. There shall be no vibration which shall be discernible to the human sense of feeling beyond the boundaries of the lot on which the source is located. At no point on or beyond the boundary of any lot shall the maximum ground-transmitted steady-state or impact vibration caused by any use or activity (except those not directly under the control of the property user) exceed a particle velocity of 0.10 inch per second for impact vibrations. Particle velocity is to be determined by the formula $PV = 6.28 FxD$, where PV is the particle velocity, inches-per-second; F is the vibration frequency, cycles-per-second; D is the maximum single amplitude displacement of the vibration in inches. For the purpose of measuring vibrations, a three-component measuring system shall be used. For the purpose of this chapter, steady-state vibrations are vibrations which are continuous, or vibrations in discrete impulses more frequent than 100 per minute. Discrete impulses which do not exceed 100 per minute shall be considered impact vibrations.
- K. Electromagnetic interference. There shall be no electromagnetic interference that:
- (1) Adversely affects at any point the operation of any equipment other than that belonging to the creator of such interference; or that
 - (2) Is not in conformance with the regulations of the Federal Communications Commission.
- L. Heat. Every use and activity shall be so operated that it does not raise the ambient temperature more than 2° C. at or beyond the boundary of any lot line.
- M. Fire-resistant construction. All new construction and additions shall be fire-resistant construction in accordance with the requirements of the State Uniform Construction Code.²¹⁵
- N. Glare. There shall be no direct or sky-reflected glare exceeding 1 1/2 footcandles measured at the boundaries of the lot on which the source is located. This regulation shall not apply to lights which are used solely for the illumination of entrances or exits or driveways leading to a parking lot. Any

214.Editor's Note: See Ch. 136, Construction Codes, Uniform.

215.Editor's Note: See N.J.A.C. 5:23 and Ch. 136, Construction Codes, Uniform.

operation or activity producing intense glare shall be conducted so that direct and indirect illumination from the source of light shall not cause illumination in excess of 0.1 footcandle in residential districts.

O. Lighting and illumination. Artificial lighting or illumination provided on any property or by any use shall adhere to the following standards:

- (1) The illumination provided by artificial lighting on the property shall not exceed 0.5 footcandle beyond any property line.
- (2) Spotlights or other types of artificial lighting, that provides a concentrated beam of light, shall be so directed that the beam of light does not extend beyond any property lines.
- (3) Spotlights or other types of artificial lighting used to illuminate signs or building faces shall not emit beams of light that extend beyond the vertical plane of the sign or building face that they illuminate and shall not be located in such a manner as to cause the beams of light to be reflected upon any adjoining property, public street or vehicular circulation area.

§ 150-68. Property maintenance. [Amended 9-13-2006 by Ord. No. 15-2006]

It is the intent of this section to assure that the public health, safety, and welfare is not impaired by the neglected maintenance of the buildings and property. It is further intended to assure that site improvements required by a Planning Board are properly maintained and operable. It shall be the Code Enforcement Officer's responsibility to enforce this section where property conditions pose a hazard to the public or where a property owner fails to maintain a required site improvement. It shall be the responsibility of every property owner, tenant, developer and applicant to maintain in a safe and orderly condition all buildings and land in the municipality which they own, use, occupy or have maintenance responsibility for in accordance with the following regulations.

A. Maintenance of all land uses within the municipality shall include, but is not limited to, the following:

- (1) Potholes and other pavement failures within paved parking areas shall be repaired on a regular basis, but in no event shall potholes or pavement failures be left unrepaired for a period in excess of 30 days. If such potholes or pavement failures are hazardous to vehicles, they shall be appropriately barricaded and marked to warn motorists.
- (2) Paint striping, traffic control signs and markings, and all other signs and graphics shall be maintained in a condition whereby they can be clearly seen and are legible.
- (3) Curbing, other pavement edging and sidewalks shall be maintained free of cracks and holes which would present a hazard to pedestrians.
- (4) Unpaved or gravel parking and pedestrian areas shall be maintained and regularly regraded in a manner which will keep the area free of holes and other severe grade changes which would be hazardous to vehicular and pedestrian usage.
- (5) All areas of the site shall be kept free of debris and other materials. All users of shopping carts or similar items shall provide for the regular pickup of such shopping carts or similar items from parking areas and other portions of the site at least once every hour during their business hours. All shopping carts or similar items shall either be stored indoors or in a location adjacent to the building specifically set aside for such storage during nonbusiness hours.
- (6) All plantings and ground cover shall be regularly watered and cut. All dead plant materials shall

be removed or replaced (if such plantings are required under this article, they shall be replaced only). All lawn or other nonpaved areas shall be kept trimmed and free from weeds and other noxious growth.

- (7) Building finishes shall be maintained reasonably free of peeling or cracked paint, rust or other unsightly conditions.
 - (8) All refuse stored outdoors shall be kept within containers having lids, in a manner that the refuse is not visible to pedestrians or persons within vehicles on or off the site. Such containers shall be stored only within side or rear yard areas and shall not be located to interfere with vehicular or pedestrian circulation.
 - (9) Appropriate areas shall be provided for the storage of recyclable materials. These areas shall be expanded or modified as necessary to meet the requirements of any change in occupancy. Such areas shall be within the structure or in side or rear yards and shall be properly screened. Provisions shall be made to store paper, cardboard and similar items out of the weather. Such areas shall be maintained in a clean, orderly and neat condition.
 - (10) All outdoor lighting shall be maintained in a working condition.
- B. All land uses for which development (site plan or subdivision) approval is granted subsequent to the adoption of these regulations or for which site plan or subdivision approval was previously granted under regulations heretofore in effect shall be required to maintain all structures and improvements shown on the approved site plan or subdivision plan in a safe and orderly condition. In addition to the maintenance responsibilities specified above, additional maintenance responsibilities shall include, but are not limited to, the following:
- (1) All ground cover and plantings within screening and landscaping areas shown on an approved site plan or subdivision shall be regularly maintained. When plant material shown on an approved site plan or subdivision dies, it shall be replaced within the first 30 days of the next planting season.
 - (2) Where a site plan specifies an outdoor refuse storage area, refuse shall only be stored outdoors in such areas. Refuse containers located elsewhere on the site shall not be permitted.
- C. Failure of the responsible property owner, tenant, developer and/or applicant to maintain property in accordance with the provisions of this section shall be a violation of this chapter and subject to the penalties prescribed in this chapter.

§ 150-69. Signs.

All signs shall conform to the provisions of this section and to the applicable requirements of the New Jersey Uniform Construction Code.²¹⁶

- A. Permit required. It shall be unlawful for any person to erect, alter or relocate within the Borough of Atlantic Highlands any nonexempt sign as set forth and defined in this article, without first making application to the Construction Official, paying the appropriate fee, and obtaining a permit from the Code Enforcement Officer and the Construction Official.
- B. Exemptions. The following types of signs and advertising shall be exempt:

216. Editor's Note: See N.J.A.C. 5:23 and Ch. 136, Construction Codes, Uniform.

- (1) Theater bills and changeable copy signs. The changing of bills of acts and features of theaters on established frames at theaters, and changing the copy of any authorized changeable copy sign, which bill or copy does not conflict with these regulations.
 - (2) Signs within a building. A sign located within a building, not attached directly to or painted on a window.
 - (3) Signs on windows. No permit shall be required for signs upon the interior of a show window or upon the interior of any window within the commercial zones, which signs advertise only the name of the occupant of the building, office or store, as the case may be, the business conducted or products sold therein, and does not cover more than 30% of the area of such window.
 - (4) Show cards. Show cards not to exceed 28 inches by 22 inches advertising a public activity may be placed or displayed in show windows of occupied business establishments for a period of 30 days before, and seven days after, such public activity.
 - (5) Real estate signs. One real estate sign per lot not exceeding nine square feet in area.
 - (6) Vacated property. One sign not exceeding six square feet in area, giving the name, business and new address of the former occupant, may be displayed for not more than 60 days.
 - (7) Church bulletins not exceeding 20 square feet in area.
 - (8) Banners, streamers and flags advertising openings and sale days, provided that such devices shall not be displayed on any one property for more than 30 days in any calendar year.
 - (9) Political signs. Signs concerning a matter of public interest, provided the total area of signs on any one lot does not exceed 32 square feet in area. Political signs regarding an election shall be removed within seven days after the election. This section shall be interpreted in accordance with State v. Miller, 162 N.J. Superior 333, affirmed 83 N.J. 402.
 - (10) All lettering or graphics on any canopy or awning which does not exceed six inches in height shall be exempt. The area of such lettering or graphics must be 10% or less of the total square footage of the awning or canopy.
- C. Application fee and required information. Application for permits shall be on a prescribed form of the Borough and shall be accompanied by a fee as provided in Chapter 168, Article II. The applicant will prepay the fees of the Municipal Engineer if the Zoning Officer determines that engineering review of the proposed sign is required.²¹⁷
- D. Inspection of premises; issuance of permit; nullification.
- (1) The Construction Official, upon receipt of an application and required fees, shall contact the Zoning Officer who will examine the premises upon which it is proposed to erect the sign and determine if the proposed sign is in compliance with all the requirements of this article and all other ordinances of the Borough of Atlantic Highlands.
 - (2) Upon review by the Zoning Officer and the payment of any applicable additional fees, a permit or denial shall be issued by the Zoning Officer and Construction Official within 10 business days. If the work authorized under the permit has not been completed within four months after the date of the issuance, the permit shall become null and void.

217.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

E. Construction and design of signs.

- (1) All signs shall be designed, built, and installed according to the current New Jersey Building Code.²¹⁸
- (2) No signs, illustrations or symbols shall be placed so as to interfere with the opening of an exit door of any building or to obstruct any window opening of a room in a dwelling or to interfere with the use of any fire escape or to create a hazard to pedestrians.
- (3) No more than four colors shall be used for any signs, (Black and white are "colors" for purposes of this article.) If more colors are needed, then a color rendering of the sign must be submitted and approved by the Borough Zoning Officer and/or a Borough appeal board (e.g., Planning Board).

F. Lighting.

- (1) No illustrated sign shall be of such a color or located in such a fashion as to diminish or detract in any way from the effectiveness of any traffic signal or similar official safety or warning device.
- (2) No illuminated signs shall flash or rotate.
- (3) Exposed sources of illumination shall be prohibited.

G. Roof signs. Roof signs are prohibited, except such directional devices as may be required by federal authorities.

H. Sign regulations for noncommercial zones. It shall be unlawful to erect or alter any sign in any noncommercial zone except as follows:

- (1) One sign on the property to be sold or rented, which shall be of the ground type as defined in these regulations, not to exceed nine square feet in area.
- (2) One sign advertising a permitted use or indicating the home or office of a professional is permitted, provided that such sign shall not exceed four square feet on any one face.
- (3) Nameplate signs identifying the occupant and street number of the building but not designating a profession, trade or business of any kind or character, provided that such sign not exceed two square feet.
- (4) One ground nonflashing sign advertising a permitted use or indicating the home or office of a recognized profession, provided such sign shall not exceed six square feet.
- (5) One freestanding nonflashing directional sign may be erected indicating direction at each driveway which provides a means of entrance or exit for the off-street parking facilities on the premises.
- (6) For each school, hotel, medical facility, philanthropic institution, nonprofit organization or church, the total area of such freestanding sign or signs shall not exceed 20 square feet. A sign not exceeding 20 square feet in area may be placed on the public parking area or entrance driveway. Such signs may be supported on posts or on columns where permits have been secured for such posts or columns but shall not be so placed as to extend over any walkway or

218. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

roadway. Such signs shall be in addition to the total sign area permitted above.

- (7) For apartment houses, signs shall be limited to the name and house number of the building. Such signs shall only be permitted when facing the street or streets upon which entrances to the building are located and shall not exceed 12 square feet for each such building up to 40 feet frontage on the street, increasing one square foot for each full five feet of building frontage in excess of forty-foot-width of frontage on the street, but not to exceed 20 square feet for each such building frontage and set back 10 feet from the property line.
- I. Sign regulations for commercial zones. It shall be unlawful to erect or alter any sign in any commercial zone except as follows: **[Amended 9-7-1994 by Ord. No. 54-94]**
- (1) One wall nonflashing sign per established business expressly related to the business conducted on the premises for each street frontage not exceeding a total of 10% of the building face, including the window area, but not to exceed five feet in height, advertising only the business carried on and/or the services and products made or sold on the premises. In determining the size of the sign, the area between the letters shall be included.
 - (2) No wall sign shall project higher than the highest point of the parapet of the facade of the building to which it is affixed and shall not project over 12 inches from the face of the building nor beyond the property line bounding the property upon which it is erected.
 - (3) One ground nonflashing sign per established business, expressly related to the business conducted on the premises for each street frontage not exceeding a total of 18 square feet and not more than 10 feet in height and set back 10 feet from the property line.
 - (4) Side or rear wall sign. There can be no more than one sign per side or rear wall on a single building. The sign shall be no more than 12 square feet in area, including borders.
 - (5) Any existing billboard and poster panel may be maintained in its existing location, but any billboard or poster panel which is hereinafter razed, demolished or obliterated shall not be replaced in any form.
 - (6) One freestanding nonflashing directional sign may be erected indicating direction at each driveway which provides a means of entrance or exit for the off-street parking facilities on the premises.
 - (7) Projecting signs of no more than 12 square feet including borders, except signs containing self-contained light boxes can be no more than six square feet. They may not project farther than six feet from the face of the building. No part of the sign should be lower than 10 feet or higher than 18 feet above the sidewalk.
 - (8) One fence sign per business and shall be no more than eight square feet in area.
 - (9) Directional signs, not to exceed five feet in height and two square feet in area. All directional signs shall in no way interfere with the safety of pedestrian or other traffic.
 - (10) Signs advertising matters of public or charitable character, for a period not to exceed 30 days.
- J. Removal of signs after cessation of business. Any sign now or hereafter existing which no longer advertises a bona fide business conducted or a product sold shall be taken down within 30 days after the cessation of such business.
- K. Nonconforming signs. Any signs now existing which would be in violation under the provisions of

this article may be continued on such building, structure, lot or land so occupied, but may not be enlarged. The failure to keep a nonconforming sign painted or in good repair for a period of one year shall constitute abandonment and such sign may not be revised and must be removed.

- L. Electrically operated signs. A sign shall not be illuminated by other than electrical means, devices, and wiring in accordance with the requirements of the National Fire Protection Association.
- M. Inspection and maintenance. It shall be the duty of the Zoning Officer to inspect each sign for which a permit is required upon the completion of its installation and to make inspections of all signs from time to time as may be required by this article.
 - (1) It shall be the duty of the owner or lessee to maintain the sign in good repair, and painted. Failure to do so, following 30 calendar days' notification by the Zoning Officer, shall constitute abandonment and shall be removed.
 - (2) In the event that any sign is found to be in a dangerous structural condition on account of loose fittings or similar defects, the Zoning Officer shall notify the owner thereof in writing and advise in what manner the owner shall make the same safe and secure. In case the owner does not comply with the requirements of the Zoning Officer within seven calendar days from receipt of said notice, the same may be removed by the Borough, in which case the owner of the sign and the owner of the building shall be jointly and separately liable to the Borough for the cost of removal and the owner shall be liable for a penalty as hereinafter provided in this article.
 - (3) In the event any sign is found to be in nonconformance with this article, the Zoning Officer shall notify the owner of said sign and the owner of the property on which it is erected of such violation and the owner shall, within 30 calendar days, correct such nonconformance. In case the owner thereof does not comply with the order of the Zoning Officer within 30 calendar days, such signs shall be removed by the Borough, in which case the owner of the sign and the owner of the building on which it is erected shall be jointly and separately liable to the Borough for the cost of the removal and the owners shall be liable to a penalty as hereinafter provided.
- N. Certain signs prohibited. The following types of signs are specifically prohibited:
 - (1) Pylon signs supported by pyramidal towers supports.
 - (2) Roof signs except as permitted in Subsection G hereof. **[Amended 9-7-1994 by Ord. No. 54-94]**
 - (3) Marquee signs except as specified in Subsection B(1) hereof. **[Amended 9-7-1994 by Ord. No. 54-94]**
 - (4) Banners, streamers, advertising flags and twirlers except as specified in Subsection B(8). **[Amended 9-7-1994 by Ord. No. 54-94]**
 - (5) Signs or posters on poles, posts, trees, sidewalks or curbs in any fashion.
 - (6) Signs producing glare to the extent that they unnecessarily or unreasonably interfere with pedestrian or vehicular traffic or which are detrimental to the welfare of persons in their places of abode.
 - (7) Signs standing, painted or installed on sidewalks.
 - (8) Exterior moving signs of every nature.

- (9) Outdoor neon signs in which the neon tube is directly exposed to view.
- (10) Vinyl, cloth or similar signs.
- O. Liability insurance. Every person responsible for a sign placed over public property shall obtain and maintain liability insurance coverage which shall protect and hold the Borough harmless from any and all claims or demands for damages resulting from the collapse, failure, or combustion of the sign or parts thereof.

§ 150-70. Fences and walls.

- A. Fences and walls hereafter erected, altered or reconstructed in any zone shall not exceed six feet in height, except as follows: **[Amended 10-13-1999 by Ord. No. 6-99]**²¹⁹
 - (1) Walls and fences which are not open fences as defined in these regulations, located in a front yard or within 50 feet of any natural body of water, shall not exceed 48 inches in height.
 - (2) In any business zone, fences not exceeding eight feet in height may be erected in the rear or side yard areas and behind the building setback line in accordance with a site plan approved by the Planning Board.
 - (3) On park, recreation or school properties, open-wire fences not exceeding eight feet in height may be erected in the rear or side yard areas and behind the building setback line.
 - (4) Fences specifically required or approved by the Planning Board or required by other provisions of these regulations or other municipal and state regulations.
- B. All fences must be erected within the property lines, and no fence shall be erected so as to encroach upon a public right-of-way.
- C. Barbed wire, razor wire, canvas or cloth fence and fencing construction are prohibited in all zones.
- D. All supporting members of a fence shall be located on the inside of the fence, and if erected along or adjacent to a property line, the supporting members of the fence shall face the principal portion of the tract of land of the property upon which the fence is erected.
- E. Tennis court fences, baseball and softball backstops and spectator protective fencing are exempt from the requirements of this section, provided they are not located within any required yard area. Located outside of any required yard area, they are subject to the height limitations of the particular zone district.
- F. Fences shall be erected in a manner so as to permit the flow of natural drainage and shall not cause surface water to be blocked or dammed to create ponding.
- G. No hedges or screen plantings over three feet in height shall be permitted within 50 feet of any waterway; however, this section shall not be construed to prohibit the planting of shade or ornamental trees either individually or in small groupings.

§ 150-71. Sidewalks and curb ramps.

- A. Concrete sidewalks and curb ramps shall be four inches thick, except across the width of proposed driveways where the concrete sidewalk shall be constructed six inches thick, with No. 6 wire mesh

219. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

welded six by six. Sidewalk repair and upkeep is the responsibility of the owner.

- B. Concrete shall have a strength of 4,500 psi at 28 days air entrained conforming to ASTM A-497.
- C. Joint sealer shall be installed every 16 feet with dummy joints every four feet.
- D. All sidewalks in the Borough of Atlantic Highlands shall be relaid, repaved and kept in repair at the cost and expense of the owner or owners of lands in front of which the same shall be located. **[Amended 9-7-1994 by Ord. No. 54-94]**

§ 150-72. Garages.

- A. On any lot in any R-1, R-2 or R-3 Zone and on any residential lot in the O-R Zone, private garage space may be provided for one motor vehicle for each 5,000 square feet of lot area, except that not more than four motor vehicles may be garaged. The width of each space shall not exceed 12 feet and 22 feet in length, and height not to exceed 16 feet. **[Amended 9-7-1994 by Ord. No. 54-94; 2-26-2003 by Ord. No. 4-2003]**
- B. No part of any detached garage structure shall be used for residential purposes. **[Amended 11-25-1998 by Ord. No. 17-98]**
- C. An attached garage may be converted for use for residential purposes if the same number of off-street parking spaces 12 feet by 22 feet are available and delineated on the property for each garage space so converted. **[Amended 11-25-1998 by Ord. No. 17-98]**
- D. For any permitted nonresidential principal use, a private accessory garage shall only be permitted as provided for by a site plan approved by the Planning Board.
- E. Except as provided by § 150-64, no trucks, tractor-trailers, tractors (for use in pulling trailers) or trailers shall be parked, stored or garaged in any residential zone; provided, however, that these provisions shall not be construed to prevent the delivery by the use of such vehicles to premises in the residential zones of merchandise, furniture or construction materials to be used in construction upon the premises.

§ 150-73. Soil removal and fill.

No fill in excess of 10 cubic yards shall be placed on any property within the Borough of Atlantic Highlands, nor shall any soil be removed from any property within the Borough of Atlantic Highlands, without the prior approval of the Borough. Approval of a site plan or subdivision showing such filling or removal or approval of grading plan by the Construction Official and/or the Planning Board or Borough Engineer shall constitute such prior approval of the Borough.

§ 150-74. Residential recreational lighting.

No lighting of tennis courts or paddle tennis courts shall be permitted in any residential zone district.

§ 150-75. Relocation of building.

Prior to the moving and relocation of any building from the existing foundation to a site within the Borough of Atlantic Highlands, the foundation at the proposed site shall have been completed. Work to secure the relocated building on the new foundation shall be pursued immediately and the building shall not be placed in any temporary location except during the twenty-four-hour period when the work of moving is done.

§ 150-76. Outdoor repair activities.

Outdoor repair activities involving boats, vehicles, trailers and other mechanical equipment may not be undertaken in a nonresidential district on any property district used only for residential purposes or on any property in a residential district, except under the following restrictions: observance of the restrictions of § 150-31B(18); no more than one item may be under repair at any time and repairs may not be performed on an aggregate total of more than 30 days in any year. Such outdoor repair activities may not be undertaken on any property in a nonresidential district not used only for residential purposes except in accordance with specific site plan approval by the Planning Board.

§ 150-77. Number of buildings on lot restricted.

No lot shall have erected upon it more than one principal residential building, except in the case of multifamily dwelling projects as permitted by this chapter.

§ 150-78. Steep slopes.

- A. Areas covered. The areas of Atlantic Highlands covered by this section (referred to hereafter as "slope area") are Blocks 1 through 6, inclusive, Lots 1, 2, 3, 4, 5 in Block 7, Blocks 8 through 28, inclusive, Blocks 53, 54, 55, 56, 57, 58, 59, 60, 70, 71, 72, 73, 74, 75, 76, and 77, as described on the Tax Assessment Map of Atlantic Highlands, dated 1968 and amended 1988. Said blocks and lots contain or adjoin slopes of 15% or greater as identified in the Atlantic Highlands Master Plan, and/or are identified as containing or adjoining slump block areas in the United States Geological Survey Professional Paper 898, dated 1974.
- B. Permit requirement exceptions. A slope area permit is required for any work or disturbance affecting a slope area, except when the area of the proposed work or disturbance:
- (1) Contains no slopes greater than 10%, nor any slope greater than 15% within 100 feet, and the work or disturbance is:
 - (a) Soil disturbance of five cubic yards or less;
 - (b) Change in impervious ground cover of 200 square feet or less;
 - (c) Removal of five trees or less, having a circumference of up to 20 inches each, measured at four feet above the ground;
 - (d) Removal or disturbance of vegetation covering 200 square feet or less.
 - (2) Contains no slopes greater than 15%, nor any slope greater than 20% within 100 feet; and the work or disturbance is:
 - (a) Soil disturbance of three cubic yards or less;
 - (b) Change in impervious ground cover of 100 square feet or less;
 - (c) Removal of three trees or less, having a circumference of up to 20 inches each, measured at four feet above the ground;
 - (d) Removal or disturbance of vegetation covering 100 square feet or less.
 - (3) Contains slopes greater than 15% and the work or disturbance is:

- (a) Soil disturbance of one cubic yard or less;
 - (b) Change in impervious ground cover of 25 square feet or less;
 - (c) Removal of one tree, having a circumference of up to 20 inches measured at four feet above the ground;
 - (d) Removal or disturbance of vegetation covering 25 square feet or less.
 - (e) All items described in Subsection B(1), (2) and (3) above represent a cumulative total per lot, per calendar year.
- (4) Inspection for tree trimming.
- (a) In slope areas of greater than 15%, no normal tree topping to provide a view, protecting adjacent structures or the removal of dead or unhealthy trees shall take place prior to an inspection and a determination as to how much of the tree may be trimmed or what trees may be removed. Such determination shall be the responsibility of the person the Mayor and Council shall designate. The fee for such inspection shall be as provided in Chapter 168, Article II.²²⁰
 - (b) Where site plan or subdivision approval is also required, the slope area permit review will be performed along with that approval process, and the applicant will submit copies of all required information to the Planning or Zoning Board as applicable. Although neither Board can grant or deny a slope area permit (except for an appeal under Subsection J) each Board shall consider all plans submitted under this section in any application for site plan or subdivision approval affecting a slope area.
- (5) Additions to a single-family residence shall be exempt from the lot coverage, impervious coverage and lot disturbance provisions of this section if the following conditions exist: **[Added 9-25-1996 by Ord. No. 14-96]**
- (a) That the size of any one-story addition, deck, patio or excavation is less than 200 square feet. Soil logs and testing for future subsurface disposal systems shall not be exempted.
 - (b) That no slope greater than 10% exists within 20 feet of the area to be disturbed.
 - (c) The applicant provides plans or a written statement describing soil erosion and stabilization measures which will be used as part of construction.
 - (d) A final inspection fee of the equivalent of one hour of the Borough Engineer's time is posted prior to the issuance of the permit.
- C. Application for permit. An application for a slope area permit shall be made to the Atlantic Highlands Construction Official. The application shall include at least:
- (1) Property description by Tax Map block and lot, and by street address if available.
 - (2) Sketch of location of proposed work or disturbance. An informal sketch may be acceptable.
 - (3) Statement of proposed work or disturbance.
 - (4) Any other additional information as is reasonably necessary to make an informed decision,

220.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

including, but not limited to, the items listed below and in Subsection F:

- (5) Where site plan or subdivision approval is required, the following exhibits shall also be submitted:
- (a) Topographic map showing existing contours at two-foot intervals.
 - (b) Areas clearly identified showing the following, as measured between ten-foot contour lines: Area 1, 30% or greater; Area 2, 20% but less than 30%; Area 3, 15% but less than 20%; Area 4, less than 15%.
 - (c) Calculation, in square footage and acres, of amount of area in the various slope categories listed above.
 - (d) Extent and erosion potential of exposed soils.
 - (e) Length, steepness and surface roughness of exposed slopes.
 - (f) Resistance of soil to compaction and stability of soil aggregates.
 - (g) High water table, water infiltration capacity and capacity of soil profile.
 - (h) Chemical, physical and biological nature of subsurface soils.
 - (i) Type and location of construction activity, including the amount of site grading, and depth of such grading.
 - (j) The time period of exposure of erodible soils during construction.
 - (k) The area and density of woodlands and forest, within the construction site and on contiguous lands for a distance of 200 feet, or such other distance as deemed appropriate by the Municipal Engineer. All significant tree specimens four inches or greater in diameter, measured at four feet above the ground; all dogwood, American holly, and mountain laurel; and all other vegetation on slopes 15% or greater shall be indicated on the application plans as well as physically marked on the construction site.
 - (l) The extent of impervious surface to be constructed.
 - (m) Location of construction access roads.
 - (n) Calculation of amount of site grading, to include a cut-and-fill balance sheet, including cross sections, and indicating, where applicable, the volume of and source of off-site fill.
 - (o) Extent of on-site erosion sediment control measures, during and after construction and until any affected area is stabilized.
 - (p) Any other information as is reasonably necessary to make an informed decision.

D. Application review and standards of approval.

- (1) The Municipal Engineer shall review every slope area application to determine whether the proposed work or disturbance may have a detrimental impact upon any slope area. Such review shall include at least an on-site inspection. The Engineer's inspection shall be made as soon as possible considering the extent of the work necessary to evaluate the application.
- (2) The Municipal Engineer shall thereafter approve only those applications where the proposed

work or disturbance will:

- (a) Have no detrimental impacts.
 - (b) Control velocity and rate of water runoff so that such velocity and rate are no greater after construction and development than before, and are within tolerances deemed safe by the Municipal Engineer, and the project or site plan complies with all other provisions of the Borough Code and Chapter 183, Flood Damage Prevention.²²¹
 - (c) Minimize stream turbidity and changes in flow.
 - (d) Protect environmentally vulnerable areas.
 - (e) Stabilize exposed soils both during and after construction and development.
 - (f) Prevent soil slippage.
 - (g) Minimize number and extent of cuts to prevent groundwater discharge areas to underlying soils.
 - (h) Preserve the maximum number of trees and other vegetation on the site and avoid disturbance of the critical hillside, slope and forest areas.
- (3) The Municipal Engineer may impose such conditions upon any approval as said Engineer deems necessary to achieve the purposes of this section. All permanent improvements necessary to achieve the purposes of this section shall be bonded in the same manner as set forth Article IV, Procedure, of this chapter, except that a maintenance bond shall continue for two years after complete stabilization.²²²
- (4) Any approval may be subject to the condition that, for safety reasons, the applicant provides and adheres to a detailed construction and inspection schedule, copies of which shall be supplied to the Borough Construction Official for the purpose of monitoring the progress of the work and compliance with the construction schedule. Said approval may be further conditioned upon submission of periodic certifications by the applicant as to compliance with the construction schedule, and, in the event of noncompliance, written assurance as to the nature and time when steps will be taken to achieve compliance with the construction schedule.
- (5) If the applicant does not comply with the construction schedule or any other requirements or conditions attached to the approval of the application, and the Municipal Engineer or the Borough Construction Official certifies such lack of compliance, the Borough Construction Official shall thereupon revoke approval of the application, after notice to the applicant, and no further work may be performed on such site, with the exception for temporary measures necessary to stabilize the soil and to protect the site from stormwater damage or other hazards created by construction activity on the site.
- E. Lot size, development density, lot coverage and disturbance. To meet the purposes, goals and standards set forth in this section, in areas of slopes greater than 15%, the applicable provisions of this chapter relating to minimum lot sizes and density of development, and maximum percentage of lot coverage, shall be modified, and limitations of maximum impervious surfaces and maximum lot disturbance shall be added.

221.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

222.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

(1) Minimum lot size; density.

- (a) The minimum lot size shall be determined by multiplying the total land area in various slope categories by the following factors and totaling the results. This modified minimum lot size shall be used as the lot size in density calculations. Slope calculations shall be based on elevation intervals of 10 feet.

Slopes	Factor
30% or greater	0.1
20% but less than 30%	0.2
15% but less than 20%	0.5
Less than 15%	1.0

- (b) As the result of the computation of the total density allowed, any fractional amount shall be rounded down or truncated to the nearest whole integer. If the total density allowed is less than one, and prior to this section the lot dimensions met or exceeded the minimum lot size for its zone, than the total density allowed shall be one.

(2) Determination of maximum lot coverage.

- (a) The maximum lot coverage area shall be determined by multiplying the total land area in various slope categories by the following factors, totaling the results and multiplying the result by the maximum lot coverage percentage allowed for the appropriate zone. Slope calculations shall be based on elevation intervals of 10 feet.

Slopes	Factor
30% or greater	0.25
20% but less than 30%	0.50
15% but less than 20%	0.75
Less than 15%	1.00

- (b) Where the modified maximum lot coverage area is less than the minimum gross floor area required for the proposed building, the minimum gross floor area required shall be the modified maximum lot coverage area.

- (3) The maximum impervious surface area permitted in slope areas shall be determined by multiplying the total land area in various slope categories by the following percentages and totaling the results:

Slopes	Percentage
30% or greater	10%
20% but less than 30%	15%
15% but less than 20%	25%
Less than 15%	35%

- (4) The maximum lot disturbance shall be no greater than 130% of the maximum impervious surface permitted for the lot.
 - (5) Setbacks of all structures necessary for slope area stabilization shall be sufficient to allow for any future maintenance that may be necessary.
 - (6) All land required to be maintained as permanent open space shall be indicated as such on any approved plans.
- F. Environmental appraisal and applicability.
- (1) When site plan or subdivision is required, an environmental impact report or request for waiver shall be prepared. The Municipal Engineer shall review and approve the report in accordance with specifications and procedures required by this section.
 - (2) No application for slope area permit shall be approved unless it has been affirmatively determined, after an environmental appraisal, that the proposed project:
 - (a) Will not result in a detrimental impact on the environment; and
 - (b) Has been conceived and designed in such a manner that it will not significantly impair natural processes.
- G. Review and inspections fees. The initial application filing fee shall be as provided in Chapter 168, Article II. The applicant shall deposit with the Chief Financial Officer \$250. If additional escrow fees are required, the applicant shall deposit with the Chief Financial Officer an amount equal to the estimated review fee, as determined by the Municipal Engineer. Inspections shall be required before, during stabilization and upon completion of the work or disturbance, during and for two years after complete stabilization, or for any other reasonable time, as determined by the Municipal Engineer, to insure the purposes of this section are met. No permit will be issued until a deposit is placed with the Chief Financial Officer, equal to the estimated inspection fee, as determined by the Municipal Engineer. If additional inspection fees are required, the applicant shall deposit with the Chief Financial Officer an amount equal to the new estimated inspection fee before any work can continue. The inspection fee deposit account shall remain for two years after complete stabilization. Any deposit accounts shall be maintained at levels sufficient at all times to cover all estimated fees or work may be halted. The Chief Financial Officer will keep the Municipal Engineer aware of account balances as necessary. **[Amended 5-9-2007 by Ord. No. 07-2007; 2-23-2011 by Ord. No. 03-2011]**
- H. Municipal liability. The granting of any permit or approval in any slope area shall not constitute a representation, guarantee or warranty of any kind by the Borough or by any official or employee thereof of the practicability or safety of any structure, use or other plan proposed, and shall create no liability upon, or a cause of action against, such public body, official or employee for any damage that may result pursuant thereto.
- I. Penalties. In addition to penalties already provided in § 150- 15, the Court may order any person convicted of violating this section to pay the Borough all costs for and associated with necessary stabilization or corrective measures, as determined by the Municipal Engineer.
- J. Appeal. The Planning Board shall have the power to hear and decide appeals where it is alleged by the applicant that there is error in any order, requirement, decision (including review and inspection fees under Subsection G) or refusal made by the Borough Engineer based on or made in the enforcement of this section. All such appeals under this section from the decisions of the Borough Engineer shall be taken within 20 days by filing a notice of appeal with the Borough Engineer

specifying the grounds of such appeal. The Borough Engineer shall immediately transmit to the Planning Board all papers constituting the record upon which the action appealed from was taken. All such appeals shall be heard by the Planning Board upon notice given by the applicant as required by § 150- 9D. The Planning Board may permit, or require, the record on appeal to be supplemented with such documents or other evidence or information as are reasonably necessary to make an informed decision as to whether the requirements of this section have been met. **[Amended 4-12-2000 by Ord. No. 2-00]**

§ 150-79. Grading and excavation. [Added 1-13-1999 by Ord. No. 18-98]

This section is intended to provide the community with fair and equitable grading practices and shall not supersede the requirements of any other ordinance or code.

- A. Protection of utilities. Public entities or services shall be protected from damage due to grading or excavation operations by the property owner having such operation done. Persons excavating must comply with the Underground Facility Protection Act, N.J.S.A. 48:2-73, as amended, and provide proof of compliance upon request.
- B. Protection of adjacent property. Adjacent properties shall be protected from damage due to grading or excavation operations by the property owner having such operations done. No person shall have property graded or excavated so as to allow or result in increased drainage runoff on adjacent properties. No person shall excavate on land sufficiently close to the property line to endanger any adjoining public streets, sidewalk, alley or other public or private property, without supporting and protecting such property from any damage that may result.

§ 150-80. (Reserved)²²³

§ 150-81. Wireless telecommunications towers and antennas. [Added 10-26-2005 by Ord. No. 17-2005]

- A. Purpose. The purpose of this section is to establish siting and development regulations for wireless telecommunication towers and antennas for the siting of wireless telecommunications towers and antennas to:
 - (1) Protect residential areas and land uses from potential adverse impacts of towers and antennas;
 - (2) Encourage the location of towers in appropriate locations;
 - (3) Minimize the total number of towers throughout the Borough;
 - (4) Strongly encourage the joint use of approved tower facilities as a primary option rather than construction of new or additional single-use towers;
 - (5) Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
 - (6) Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques;

223. Editor's Note: Former § 150-80, Affordable housing obligation, added 11-30-2005 by Ord. No. 30-2005, was repealed 6-12-2013 by Ord. No. 10-2013.

- (7) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;
 - (8) Consider the public health and safety of communication towers; and
 - (9) Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures. In furtherance of these goals, Atlantic Highlands Borough shall give due consideration to the Borough Master Plan, Zoning Map,²²⁴ existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.
- B. Nonapplicability to amateur radio stations and to receive-only antennas. The provisions of this section shall not govern any antenna that is owned and operated by a federally licensed amateur radio station operator or is used exclusively as a "receive-only antenna" in accordance with Federal Communications Commission (FCC) regulations. (See § 150-66, Noncommercial radio and television antennae.)
- C. Antennas and towers permitted on Borough property. Wireless communications towers and antennas which are located on property owned, leased, or otherwise controlled by the Borough of Atlantic Highlands and which are approved by the governing body shall be deemed to be permitted as a telecommunications facility.
- D. General requirements.
- (1) Use. Wireless telecommunications towers and antennas other than those on municipal facilities are conditional uses and shall meet the conditional use requirements under Article VI of this chapter.
 - (2) Lot size. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot coverage requirement, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.
 - (3) Inventory of existing sites. Each applicant for an antenna and/or tower shall provide to the Borough as part of the application an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of Atlantic Highlands Borough or within one mile of the border thereof, including specific information about the location, height, and design of each tower. The Borough may share such information with other applicants applying for approvals under this section or other organizations seeking to locate antennas within the jurisdiction of Atlantic Highlands Borough; provided, however, that the Borough is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
 - (4) Uniform Construction Code;²²⁵ safety standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state and municipal codes, including the New Jersey Uniform Construction Code and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Borough concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring the tower

224.Editor's Note: The Zoning Map is on file in the Borough offices.

225.Editor's Note: See N.J.A.C. 5:23 and Ch. 136, Construction Codes, Uniform.

into compliance with such standards. Failure to bring such tower into compliance within said 30 days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

- (5) Franchises. Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in Atlantic Highlands Borough have been obtained and shall file a copy of all required franchises with the Borough.
- (6) Public notice. For purposes of this section, any variance request, conditional use application or request for site plan approval shall require public notice to all abutting property owners and any property owners of properties that are located within the corresponding separation distance in addition to any notice otherwise required by under this chapter.
- (7) Signs. No advertising signs shall be allowed on an antenna or tower.
- (8) Buildings and support equipment. Buildings and support equipment associated with antennas or towers shall comply with the requirements of this chapter.
- (9) Multiple antenna/tower plan. Atlantic Highlands Borough encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.
- (10) Maximum height.
 - (a) The tower shall meet the following maximum height and usage criteria:
 - [1] For a single user, up to 90 feet in height;
 - [2] For two users, up to 120 feet in height; and
 - [3] For three or more users, up to 150 feet in height.
 - (b) Proof shall be required of the applicant seeking to erect a tower for multi-use {Subsection D(10)(a)[2] and [3] above}, confirming that multi-users are under contract for the facilities and that a taller tower will not be built merely upon the speculation that another user will be found.
 - (c) A licensed New Jersey professional engineer must certify that the tower can structurally accommodate the number of shared users proposed by the applicant.
- (11) Overall comprehensive plan. In addition to any information required for applications for site plan review pursuant to this chapter, applicants for approval for a tower shall submit an overall comprehensive plan that includes the following information:
 - (a) A location plan drawn to scale and clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), Master Plan classification of the site and all properties within the applicable separation distances pursuant to this chapter, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawing of the proposed tower and any other structures, topography and parking.
 - (b) Legal description of the parent tract and leased parcel (if applicable).
 - (c) The setback distance between the proposed tower and the nearest residential unit, platted

residentially zoned properties and platted residentially developed properties.

- (d) The separation distance from other towers described in the inventory of existing sites submitted pursuant to this chapter shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
 - (e) A landscape plan showing specific landscape materials.
 - (f) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
 - (g) A description of compliance with this section and pursuant to this chapter, and all applicable federal, state or local laws.
 - (h) A statement by the applicant as to how the location of the tower and antennas specifically relates to the objective of collocating the antennas of many different providers of wireless communication services on a single supporting structure. Towers shall be available for co-location of compatible service providers.
 - (i) Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned and operated by the applicant in the municipality.
 - (j) A statement by the applicant describing how the proposed location of the proposed antennas specifically relates to the overall objective of providing adequate wireless communication services within the Borough of Atlantic Highlands while at the same time limiting the number of towers to the fewest possible, including the use of existing towers, other structures or alternate technology not requiring the use of towers or structures to provide the wireless services to be provided through the use of the proposed tower.
 - (k) A description of the feasible locations(s) of future towers or antennas within the Borough based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected. The grant of an approval will not constitute a determination that the other referenced locations are suitable or approvable for such structures/uses.
 - (l) A mapped location and written description of all existing and approved supporting towers for all providers of wireless communication services within one mile of the subject site, both within and outside of the Borough of Atlantic Highlands.
 - (m) A mapped location and written description of all existing or approved water towers or water standpipes and existing high-tension power line stanchions with one mile of the subject site, both within and outside of the Borough of Atlantic Highlands.
 - (n) A statement by the applicant describing how the proposed location of the proposed antennas specifically relates to the anticipated need for additional antennas and supporting structures within and near the Borough of Atlantic Highlands and by other providers of wireless communication services within the Borough.
- E. Factors considered in granting approval for towers. In addition to any standards for consideration of site plan pursuant to this chapter and requirements set forth in this chapter, the municipal agency shall consider at least the following factors in determining whether to issue an approval:

- (1) Height of the proposed tower;
 - (2) Proximity of the tower to residential structures and residential district boundaries;
 - (3) Nature of uses on adjacent and nearby properties;
 - (4) Surrounding topography;
 - (5) Surrounding tree coverage and foliage;
 - (6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - (7) Proposed ingress and egress; and
 - (8) Availability of suitable existing towers, other structures or alternative technologies not requiring the use of towers, or structures, as discussed in this section, pursuant to this chapter.
- F. Security fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anticlimbing device; provided, however, that the municipal agency may waive such requirements, as it deems appropriate.
- G. Landscaping.
- (1) The following requirements shall govern the landscaping surrounding towers for which site plan approval is required; provided, however, that the municipal agency may waive such requirements if the goals of this section would be better served thereby.
 - (a) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences.
 - (b) In locations where the visual impact of the tower would be minimal, landscaping requirement may be reduced.
 - (c) Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.
 - (2) In approving the tower, the municipal agency may impose conditions, including the use of an alternative tower structure, to the extent the municipal agency concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.
 - (3) During the public hearing process, the applicant shall schedule the time for a crane test with the Secretary of the Planning Board in order to provide the members of the Planning Board and the general public the opportunity to view a crane at the location and height of the proposed tower. Thereafter, a visual sight distance analysis shall be prepared by the applicant and presented to the Planning Board, including photographic reproductions of the crane test, graphically simulating the appearance of the proposed tower, with at least three antenna arrays attached thereto and from at least 15 locations around and within one mile of any proposed tower where the tower will be most visible.
 - (4) All towers and antennas shall also fully comply with the requirements of this chapter.
- H. Removal of abandoned antennas and/or towers. The applicant shall provide a performance bond and/or other assurances satisfactory to the Planning Board, in a form approved by the Planning Board

Attorney, that will cause the antennas, any supporting tower, the electric equipment cabinets, and building enclosing the electronic equipment shelters, and all other related improvements to the land to be removed, at no cost to the Borough, when the antennas and/or towers are no longer operative. Any antenna or tower that is not operated for a continuous period of six months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within 90 days of receipt of a written notice from the Borough of Atlantic Highlands notifying the owner of such abandonment. Failure to remove an abandoned antenna and/or tower within said 90 days shall be grounds for removal of the tower or antenna by the Borough and the removal paid for by the owner. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower. Upon the dismantling and removal of a tower, the property on which the tower was located shall be restored to a safe and landscaped condition compatible with adjacent properties by the owner.

- I. Preexisting towers. Preexisting towers, which are operating at the time of the adoption of this section, shall be allowed to continue their usage as they presently exist. Routine maintenance is permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this section. If the use of the tower has terminated and the use is determined to be abandoned, the requirements for removal in this section, and pursuant to this chapter, shall apply.

§ 150-81.1. Procedures and standards regarding deployment of small wireless facilities in public rights-of-way. [Added 7-24-2019 by Ord. No. 10-2019; amended 8-12-2021 by Ord. No. 19-2021]

A. Definitions.

- (1) All definitions of words, terms and phrases that are set forth in the Communications Act of 1934, P.L. 73-416, as amended by various statutory enactments, including, but not limited to, the Telecommunications Act of 1996 P.L. 104-104,²²⁶ are incorporated herein and are made apart hereof.
- (2) All definitions of the words, terms and phrases that are set forth in the portion of the Middle Class Tax Relief and Job Creation Act of 2012, P.L. 112-96, as codified in 47 USC § 455, are incorporated herein and are made a part hereof.
- (3) All definitions of words, terms and phrases that are set forth in the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., are incorporated herein and are made apart hereof.
- (4) All of the definitions of words, terms and phrases that are set forth in the Code of Federal Regulations at 47 CFR 1.6002, as amended, are incorporated herein and are made a part hereof.
- (5) In addition to the foregoing, the following words, terms and phrases shall have the meanings indicated unless an alternate meaning clearly is discernable from the context in which the word, term or phrase is used:

PERSONAL WIRELESS SERVICES — As defined in 47 U.S.C. § 332(c)(7)(C), as supplemented and/or as amended.

PUBLIC RIGHT-OF-WAY — The surface, the airspace above the surface and the area below the surface of any street, road, highway, lane, alley, boulevard or drive, including the sidewalk, shoulder and area for utilities owned by the municipality within an easement to the public or other easement owned by the municipality.

226.Editor's Note: See 47 U.S.C.A. § 609 et seq.

SMALL WIRELESS FACILITY — As defined in the Code of Federal Regulations at 47 CFR 1.6002(1), as supplemented and/or as amended. "Small wireless facility" means a wireless facility that meets both of the following qualifications: i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cutoff switch, and vertical cable runs for the connection of power and other services.

SMART POLE — A decorative utility pole that conceals, disguises or camouflages one or more small wireless facility installation(s) and may include other features, such as street lighting, 911 call service access, public access Wi-Fi and surveillance cameras. A smart pole must allow for multiple occupants and allow space for municipal use for other services and/or equipment. Smart poles shall neither have external latches, external hinges, nor external cabling. The pole should be made of an inherently rust-resistant material (i.e., aluminum alloys or stainless steel).

UTILITY POLE — A wooden or metal pole that is used by public utilities to support electrical wires, telephone wires, coaxial cables, fiber-optic cables and like and similar appurtenances.

- (6) In the event that a term, word or phrase is not defined in any of the aforementioned statutes and is not otherwise defined herein, then that term, word or phrase shall have its common, ordinary meaning.

B. Small wireless facility siting permit required; consent to use rights-of-way required.

- (1) No person shall place a small wireless facility in any right-of-way without first filing a small wireless facility siting permit application, in the form specified herein and in accordance with the procedures specified herein, with the Borough Clerk and obtaining a siting permit therefor, except as otherwise may be provided in this section. Upon approval of a siting permit application, the siting permit authorizing placement of a small wireless facility in a public right-of-way shall not be issued by Borough Clerk to any applicant unless:
- (a) All siting permit application fees and escrow fees, as established herein, have been paid; and
 - (b) All other governmental permits or other governmental approvals that are required for the deployment(s) proposed by the applicant's siting permit application under the New Jersey Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., and the administrative regulations adopted thereunder, any applicable provision of the Borough Code of the Borough of Atlantic Highlands, and by any other applicable federal, state or municipal law have been issued by the appropriate issuing authority therefor to the applicant and the applicant has supplied copies of such other permits or approvals to the Borough Clerk for inclusion with the applicant's application documents; and
 - (c) The applicant has entered into a right-of-way use agreement, the approved form of which is set forth in Appendix A²²⁷ to this section, with the municipality. The approved form of right-of-way use agreement may, from time to time, be revised, supplemented or otherwise

227.Editor's Note: Appendix A is on file in the Borough offices.

amended or replaced. All such revisions, supplements, amendments or replacements shall be approved by resolution of Borough Council. The Borough Clerk shall maintain on file the currently approved right-of-way use agreement version and shall provide a copy to all siting permit applicants. Minor deviations to the terms and conditions that are set forth in the approved form of right-of-way use agreement may be approved by Borough Council at the time that it grants consent to use a right-of-way to a siting permit applicant.

- (2) No siting permit authorizing placement of a small wireless facility in a public right-of-way shall be issued to any applicant unless the Borough Council, in the manner prescribed by applicable laws of the State of New Jersey, has granted to the siting permit applicant its consent to use public rights-of-way within the municipality. No siting of a small wireless facility shall be permitted within 200 feet of another small wireless facility unless it can be established by clear and convincing evidence that co-location on an existing or previously approved small wireless facility is not feasible. Any claims of carriers of technical incompatibility or inability to collocate need to be proven by the carrier, not disproven by the municipality. Responsibility for judging proof of said claims lies solely with the municipality and/or its chosen representative(s).

C. Installation of new structures; installation on existing structures.

- (1) No application for a small wireless facility siting permit shall be approved if the application proposes the deployment of a small wireless facility upon an existing structure in a right-of-way unless the structure is one of the types of smart poles that are set forth in Subsection A, Definitions, to this section and such smart pole specifically is designed to accommodate the reasonable and customary equipment necessary for a small wireless facility installation which will accommodate at least three carriers per small wireless facility deployment.
- (2) No small wireless facility shall be installed upon any new structure within any right-of-way unless the new structure is one of the preapproved types of smart poles that are identified in Subsection A, Definitions, to this section. A replacement pole is a new structure.
- (3) No application for a small wireless facility siting permit shall be approved if the application proposes the deployment of a small wireless facility in an area other than those specific locations set forth within the Borough's wireless siting plan, which can be found on file with the office of the Borough Clerk. All small wireless facilities must be placed within a twenty-five-foot radius of those specific locations set forth on the Borough's wireless siting plan. No more than one smart pole shall be permitted per intersection or block if the siting plan calls for the deployment of a small wireless facility at any location other than an intersection, unless otherwise specified within the wireless siting plan. No smart poles shall be located within 200 feet of another.

D. Siting permit application process.

- (1) Application filing. An application for a siting permit to place one or more small wireless facilities within a right-of-way shall be made on forms which shall be available from the office of the Borough Clerk. The application, along with the required application fee and the required escrow fee, shall be filed with the Clerk. Immediately upon receipt of an application, the Clerk shall provide copies of the application and all supporting documents that were submitted by the applicant with the application, to the Borough Engineer, the Construction Official and the Borough Attorney.
- (2) Application form. The small wireless facility siting permit application shall be made by a provider of personal wireless services, or its duly authorized representative as noted in a

notarized statement from the provider of personal wireless services on whose behalf the representative is acting, and shall contain the following:

- (a) The applicant's name, address, telephone number and email address;
 - (b) The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
 - (c) A general description of the proposed small wireless facility, existing structure and new structure work to be performed. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with particular emphasis on those matters, including, but not limited to, subservice utilities likely to be affected or impacted by the work proposed along with a description of such other governmental permits or approvals as may be required by applicable law with respect to the proposed installation(s) and a description of such other permits or approvals for which the applicant has applied;
 - (d) Authorization for any consultant acting on behalf of the applicant to speak with the municipality, or a designee of the municipality, on the area of consultation for the applicant even if the applicant cannot be available;
 - (e) Verification from an appropriate professional that the small wireless facility shall comply with all applicable federal, state and local laws, administrative regulations and codes;
 - (f) The applicant shall certify that they shall market the availability of approved facilities to all major wireless carriers in the marketplace. The applicant shall further certify that they will encourage, manage and coordinate the location and placement of any interested carrier's equipment on their structure.
- (3) An applicant seeking to deploy a network of small wireless facilities, all of which are to be located in rights-of-way, may file a batched application for up to 25 small wireless facilities and receive a single siting permit for multiple small wireless facilities.

E. Procedure on permit application; no exclusive rights.

- (1) The municipality shall review the application for a small wireless facility siting permit in light of its conformity with the provisions of this section and shall approve a siting permit on nondiscriminatory terms and conditions subject to the following requirements:
 - (a) Within 10 days of receiving an application, the Borough Clerk shall determine and notify the applicant:
 - [1] Whether the application is complete;
 - [2] If the application is incomplete, what specific information is missing; and
 - [3] Whether the deployment of the small wireless facilities as proposed requires the applicant to apply for other permits, such as a street opening permit or construction permit, for which the applicant has not yet applied. No small wireless facility siting permit application shall be deemed complete until the applicant has applied for all other permits and approvals required by all other laws and regulations that are applicable to the applicant's proposed small wireless facility deployment.
- (2) The municipality shall make its final decision to approve or deny the application within the

following timeframes:

- (a) Sixty days from the submission of a complete application to install a small wireless facility upon one or more existing structures.
 - (b) Ninety days from the submission of a complete application to install a small wireless facility upon one or more new structures.
 - (c) Ninety days from the submission of a complete batched application to install small wireless facilities upon both existing and new structures.
 - (d) The timeframes described above by which an application shall be either approved or denied may be extended by mutual consent of the applicant and municipality. Such consent shall be set forth on a form for such purposes which shall be available from the office of the Borough Clerk. Such consent on behalf of the municipality shall be exercised by the Mayor in his/her reasonable discretion.
- (3) The Borough Clerk shall notify the applicant, in writing, of the final decision, and if the application is denied, specify the basis for denial; and cite such specific provisions, as may be recommended by the Borough Attorney, from federal, state, or local laws, administrative regulations or codes as to why the application was denied.
 - (4) Notwithstanding an initial denial, the applicant may cure any deficiencies identified by the municipality within 30 days of the denial without paying an additional application fee, provided the Borough Clerk shall approve or deny the revised application within 30 days of receipt of the amended application, which shall be limited to the deficiencies specified in the original notice of denial.
 - (5) If the municipality fails to act upon an application within the timeframes prescribed by this section, the applicant may provide written notice to the municipality that the application review and decision period has lapsed. Upon receipt of such notice, Borough Council, by resolution adopted no later than its second regularly scheduled public meeting next following receipt of the notice, shall either deny the application or direct that the siting permit shall be approved and issued. Nothing in this subsection is intended in any way to impact any other right or remedy that may be available to the applicant under applicable federal or state law if the municipality fails to act upon an application within the timeframes prescribed by this section.
 - (6) A siting permit from the municipality authorizes an applicant to undertake only certain activities in accordance with this section. No approval or consent granted, or siting permit issued, pursuant to this section shall confer any exclusive right, privilege, license or franchise to occupy or use any public right-of-way within the Borough for the delivery of telecommunications services or for any other purpose.
- F. Duration. No siting permit issued under this section shall be valid for a period longer than 12 months unless construction has actually begun and continuously and diligently is pursued to completion. Upon written request from the applicant, the Mayor, upon consultation with the Construction Official, may extend the siting permit for a period of up to 12 months so long as construction has begun at the time that the applicant's request for an extension is made.
- G. Routine maintenance and replacement. A small wireless facility siting permit shall not be required for:
- (1) Routine maintenance of a small wireless facility;

- (2) The replacement of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight and height to the small wireless facility that is being replaced;
- (3) Provided, however, that on a location where the municipality and/or another provider has placed equipment or facilities, any routine maintenance or replacement that is done shall not occur until written authorization from the municipality and/or the other provider, as the case may be, to proceed is provided to the municipality, which authorization to proceed shall not unreasonably be withheld by the municipality and/or the other provider;
- (4) Provided further that if the replacement of a small wireless facility with another small wireless facility includes replacement of the structure to which the small wireless facility is attached, then an application for a siting permit shall be required.

H. Application fees.

- (1) All applications for approval and issuance of a small wireless facility siting permit pursuant to this section shall be accompanied by a fee as follows:
 - (a) For applications that do not include the installation of any new structures within a right-of-way, the application fee shall be \$500 for up to five small wireless facilities with an additional \$100 for each small wireless facility beyond five.
 - (b) For applications that include the installation of a new structure within a right-of-way, the application fee shall be \$1,000 for up to five small wireless facilities with an additional \$100 for each small wireless facility beyond five.

I. Escrow fee for third-party professionals and consultants.

- (1) In addition to the application fee, all applications for approval and issuance of a small wireless facility siting permit shall be accompanied by an escrow fee as follows:
 - (a) For applications whose proposed small wireless facility deployment(s) will not require a street opening permit pursuant to the Code of the Borough of Atlantic Highlands: \$5,000.
 - (b) For applications whose proposed small wireless facility deployment(s) will require a street opening permit of the Code of the Borough of Atlantic Highlands: \$7,500.
- (2) The escrow account deposits are required to pay for the costs of professional services, including engineering, planning, legal and other third-party professional consulting expenses connected with the review of submitted materials, including any traffic engineering review or other special analyses related to the municipality's review of the materials submitted by the applicant and the preparation of any reports or any necessary legal agreement regarding rights-of-way use. An applicant is required to reimburse the municipality for all fees, costs and expenses of third-party professionals and consultants incurred and paid by the municipality for the review process of a small wireless facility siting permit application, such as, but not limited to:
 - (a) Professional fees for reviews by third-party professionals or consultants of applications, plans and accompanying documents;
 - (b) Issuance of reports or analyses by third-party professionals or consultants to the municipality setting forth recommendations resulting from the review of any documents submitted by the applicant;

- (c) Charges for any telephone conference(s) or meeting(s), including travel expenses, requested or initiated by the applicant, the applicant's attorney or any of the applicant's experts or representatives;
 - (d) Review of additional documents submitted by the applicant and issuance of reports or analyses relating thereto;
 - (e) Review or preparation of right-of-way use agreements, easements, deeds, right-of-way municipal consent ordinances or resolutions and any and all other like or similar documents; and
 - (f) Preparation for and attendance at all meetings by third-party professionals or consultants serving the municipality, such as the Borough Attorney, Borough Engineer and Borough Planner or other experts as required.
- (3) The escrow account deposits shall be placed in a separate account by the Borough's Chief Financial Officer at the request of the Borough Clerk and an accounting shall be kept of each applicant's deposit. Thereafter:
- (a) All third-party professional or consultant fees, costs, expenses and charges shall be paid from the escrow account and charged to the applicant;
 - (b) Upon either final denial of a small wireless facility siting permit application or upon issuance of a small wireless facility siting permit, any moneys not expended for third-party professional or consulting services shall be returned to the applicant within 90 days upon written request by the applicant and as authorized by the Borough Council;
 - (c) If at any time during the application review process 75% of the money originally posted shall have been expended, the applicant shall be required to replenish the escrow deposit to 100% of the amount originally deposited by the applicant;
 - (d) No small wireless facility siting permit application shall be considered complete until such time as the required escrow fee has been posted to guarantee payment of third-party professional or consultant fees, costs, expenses and charges;
 - (e) All payments charged to the escrow deposit shall be pursuant to vouchers from the third-party professionals or consultants stating the hours spent, the hourly rate and the fees, costs, expenses and charges incurred;
 - (f) Third-party professionals and consultants submitting charges pursuant to this section shall be permitted to charge for such services at the same rates as they would charge their private clients for like or similar work, provided that:
 - [1] Professional fees are billed at rates that do not exceed such professional fees as are customarily charged by other like professionals and consultants performing similar work within the County of Monmouth; and
 - [2] Out-of-pocket costs, expenses and charges are billed on a dollar-for-dollar basis with no markup being permitted;
 - (g) The municipality shall render a written final accounting to the applicant on the uses to which the escrow deposit was put. The written final accounting shall include copies of all vouchers that were submitted by third-party professionals and consultants and paid by the

municipality.

- J. Municipal access to new structures. An applicant whose siting permit includes the installation of any new smart pole structure of any of the types that are defined in Subsection A, Definitions, to this section shall provide the municipality with access to any of the technological features that are a component the new smart pole structure such as, for example, public access Wi-Fi, 911 call service or security cameras, before the applicant offers such access to any other person or entity. Should the municipality decide to utilize any such technological features, then the municipality, on an annual basis, shall reimburse the applicant or the subsequent owner of the structure, the costs, on a dollar-for-dollar basis, of providing the municipality with such access. Such costs shall be limited to the costs of providing electricity to the components used by the municipality and the costs of any repairs required to be made to the components used by the municipality, unless the repair costs are necessitated by the acts of the applicant or subsequent owner of the structure, without regard to whether such acts are negligent or intentional.

ARTICLE VIII

Design Requirements and Standards for Subdivisions and Site Plans**§ 150-82. Purpose.**

- A. The purpose of good subdivision and site design is to create a functional and attractive development, to minimize adverse impacts, and to ensure that a project will be an asset to a community.
- B. The developer shall only be permitted to build the maximum density, intensity of development, and useable floor area ratio permitted by the zone district requirements schedule where it is demonstrated that the development adheres to all applicable ordinances, including the design requirements and guidelines set forth herein, and creates no exceptional adverse impacts. Deviations from the standards and guidelines of this article will only be permitted when authorized by the Planning Board through the issuance of a design waiver.
- C. The purpose of the requirements and standards is to ensure that the design of new development gives appropriate consideration to the scale and character of the existing neighborhood in which a development is to be located and to the cultural and natural resources of the Borough.

§ 150-83. Design requirements.

In project design and in reviewing project applications, the following principles of subdivision and site design shall apply:

- A. Data gathering and site analysis.
 - (1) Assess site characteristics, such as general site context and surrounding land uses; geology and soil; topography; climate; ecology; existing vegetation, structures, and road networks; visual features; and past and present use of the site.
- B. Subdivision and site design.
 - (1) Base the design of the development on the site analysis. Locate development to the maximum extent practical to preserve the natural features of the site, to preserve areas of environmental sensitivity, and to minimize negative impacts and alteration of natural features and to create an appropriate design relationship to surrounding uses.
 - (2) Design and arrange streets, lots, parking areas, buildings, and units to reduce unnecessary impervious cover, and to mitigate adverse effects of shadow, noise, odor, traffic, transportation, drainage, and utilities on neighboring properties.
 - (3) Consider all existing local and regional plans for the surrounding community.
 - (4) Design storm drainage facilities as an integral part of the development, and arrange the design to use as much of the natural drainage as possible.
 - (5) Design lots and sites to reduce cut and fill, and to avoid flooding and adversely affecting groundwater and aquifer recharge; and provide for sewage disposal and adequate access.
- C. Residential development design.
 - (1) Residential developments may be arranged as permitted by the zone district regulations. Consider topography, privacy, building heights, orientation, drainage, and aesthetics in placement of units. Provide units with private outdoor space where appropriate and practical.

- (2) Space buildings so that adequate privacy is provided for units.

D. Nonresidential development design.

- (1) Design commercial and industrial developments according to the same principles governing design of residential developments; locate buildings based on topography; avoid to the maximum extent practical environmentally sensitive areas; consider factors such as drainage, noise, odor and surrounding land uses in siting buildings; buffer where adverse impacts exist.

E. Circulation system design.

- (1) Design the street system to permit the safe, efficient, and orderly movement of traffic.
- (2) In addition, design the street system to meet the following objectives: to meet but not exceed the needs of the present and future population served; to have a simple and logical pattern; to respect natural features and topography; and to present an attractive streetscape.
- (3) Design streets in a hierarchical system (see Article IX).
- (4) Locate pedestrian walkways parallel to the street, but permit exceptions to preserve topographical or natural features, or to provide visual interest or for ease of circulation.
- (5) Where separate bicycle paths are required by the Master Plan, design those for commuters so that they are reasonably direct. Design recreational paths to follow scenic routes, with points of interest highlighted.
- (6) Within commercial areas, cross connections and cross easements among properties should be provided to allow for ease of vehicular and pedestrian access.

F. Landscape design.

- (1) Provide landscaping in public areas, on recreation sites, and adjacent to buildings to screen parking areas, mitigate adverse impacts, and provide windbreaks for winter winds and summer cooling for buildings, streets, and parking.
- (2) Select the plant or other landscaping material that will best serve the intended function, and use landscaping materials appropriate for local soil conditions, water availability, and environment.
- (3) Vary the type and amount of landscaping with type of development, and accent site entrance with special landscaping treatment.
- (4) Consider massing trees at critical points rather than in a straight line at predetermined intervals along streets.
- (5) Consider the impact of any proposed landscaping plan at various time intervals. Shrubs may grow and eventually block sight distances. Foundation plants may block out building windows.

G. Architectural and building design. Building layout and architectural treatment shall promote an attractive visual environment and a convenient relationship of buildings to their surrounding circulation systems and open space. Innovative and imaginative design which results in an artful treatment of building surfaces is encouraged. In evaluating the suitability of design, the reviewing agency shall consider the following:

- (1) Buildings and their environs should be designed to be attractive from all vantage points, including fences, storage areas, and rear entrances and elevations. All groups of related

buildings shall be designed to harmonize architectural treatment and exterior materials.

- (2) Accessory structures should be architecturally coordinated with the principal structure.
- (3) All exterior storage areas and service yards, loading docks and ramps, electrical and mechanical equipment and enclosures, storage tanks and the like, should be screened from the public view, both within and from outside of the development, by a fence, wall or mature landscape materials, compatible with the exterior design of the building.
- (4) Colors, materials and finishes should be coordinated in all exterior elevations of buildings to achieve continuity of expression. All roof and wall projections, such as gutters, flues, louvers, utility boxes, vents, grills, downspouts, exposed flashing, overhead doors, shall be painted or installed with an anodized or acrylic finish in a color to match adjacent surfaces.
- (5) All openings in the wall of a structure such as windows and doors should relate to each other on each elevation vertically and horizontally in an artful arrangement.
- (6) Roof planes or caps meeting the exterior facade should have overhangs or appropriate cornice and trim details.
- (7) Major entrances to buildings should be emphasized with appropriate architectural elements or details.
- (8) The fenestration and detailing of building facades should be arranged to promote a harmonious pattern of light and shade on the building face and provide a visually appealing surface.
- (9) Visual harmony should be created between new and older buildings.
- (10) Desirable features of a site should be considered and strengthened by, for example, framing or maintaining views or continuing particular design features or statements.
- (11) Building layout, access and parking areas should be arranged to relate to existing topography so as to minimize regrading and soil import or export.
- (12) Buildings should be designed to avoid long unbroken lines and monotony of expression. Building details, forms and setbacks should be used to provide visual interest.
- (13) Buildings should be spaced to permit sufficient light and privacy.
- (14) Signage shall be coordinated with architectural design.
 - (a) Soft, retractable, flameproof awnings are permitted over the first floor and above upper-floor windows. They shall not project more than six feet from the building front, and they shall not be lower than seven feet above grade. Rigid or fixed awnings are not permitted unless original or an integral part of the structure and compatible and harmonious with the scale and character of the structure and adjacent structures. Awnings shall not protrude into the Borough right-of-way.
 - (b) No lettering or images are permitted on the angled face of an awning. Lettering or images no higher than four inches may be placed on the awning valance and shall not exceed 50% of the area of the awning valance. Awning signs should not be used on the second story. Second-story businesses may use window signs confined to the lower portion of a second-story window.

- (15) In shopping centers or buildings containing multiple storefronts, each storefront should maintain a coordinated design with respect to an overall plan for colors, doors, windows, signage, and trim details.
- (16) Repetition of plant varieties, materials, screens, and sight breaks may be used to achieve compatibility between adjacent buildings of different architectural styles.
- (17) Roof shapes shall be coordinated to present a harmonious appearance.
- (18) Finish materials used shall be suitable to the use and design of the building.
- (19) Facade renovations shall preserve and protect desirable architectural details. All additions, alterations and accessory buildings shall be compatible with the principal building in design and materials.
- (20) The use of unusual slopes, color and other characteristics which cause a new building to call excessive attention to itself and create a jarring disharmony with its surroundings should be avoided or reserved for structures of broad public significance.
- (21) Exposed basement or nondecorative block walls are unacceptable as facade or building treatments. Exposed basement walls shall be painted to relate to the building design.
- (22) Multifamily and attached residential design requirements. Unless a different requirement is provided within the zone district, multifamily and attached residential development should adhere to the following:
 - (a) Consideration shall be given to topographical conditions, privacy, building height, orientation, drainage, aesthetics in the placement of units, and the relationship to open space and circulation systems.
 - (b) Residential units should front on lower-order streets.
 - (c) Residential developments should create the appearance of individuality among housing units; however, units should be developed in harmony with each other and with existing and surrounding uses.
 - (d) Convenient access to outdoor space and parking from all residential units should be provided.
 - (e) A safe, well-lighted residential environment, free from through traffic, should be provided.
 - (f) Site design should permit a minimum amount of noise intrusion into the area.
 - (g) Private and common open space should be clearly delineated. Recreation facilities should be designed and sited for the convenience of the users.
 - (h) Unless provided otherwise by the zone district, the spacing of multifamily or attached residential buildings shall adhere to the following minimums:
 - [1] Windowless wall to windowless wall: 20 feet.
 - [2] Windowed wall to windowless wall: 30 feet.
 - [3] Windowed wall to windowed wall:

- [a] Front to front: 75 feet.
- [b] Rear to rear: 50 feet.
- [c] End to end: 30 feet.
- [4] Any building face to right-of-way: 25 feet.
- [5] Any building face to residential access street curb: 30 feet.
- [6] Any building face to subcollector street curb: 35 feet.
- [7] Any building face to collector street curb: 40 feet.
- [8] Any building face to common parking area: 12 feet.

H. Landmark design.

- (1) The design of development proposed on any landmark site or on property abutting a landmark site or within a landmark district designated in the Atlantic Highlands Master Plan shall be arranged to conserve, where practical, the landmark and provide visually compatible building and site design. The Planning Board shall review the compatibility of the following when evaluating development proposals that impact landmarks:
 - (a) Building height.
 - (b) Bulk and scale.
 - (c) Placement, proportions, and design of windows, doors and roof.
 - (d) Materials and textures.
 - (e) Color.
 - (f) Signs.
 - (g) Fences, wall and other accessory structures.
 - (h) Porches.
 - (i) Railings.
 - (j) Parking layout and loading/facilities.
 - (k) Landscaping.
 - (l) Lighting standards and fixtures.
 - (m) Benches.
 - (n) Sidewalk paving.
 - (o) Trash receptacles.
 - (p) Any other exterior elements impacting the landmark.
- (2) Where rehabilitation, renovation, alterations or adaptive reuse of an historic building is

proposed, the Planning Board may apply the guidelines developed by the U.S. Department of the Interior and published as the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

- (3) The Planning Board may utilize experts in the field of landmark preservation to advise it on development proposals impacting upon a landmark.
- (4) The Planning Board shall consider the following characteristics of a landmark prior to approving a development plan which results in the demolition of an historic building:
 - (a) Its historic, architectural, cultural or scenic significance.
 - (b) If it is within a landmark district, its significance to the district as a key, contributing or noncontributing resource and the probable impact of its removal on the district.
 - (c) Its potential for use for those purposes currently permitted by this chapter.
 - (d) Its structural condition and the economic feasibility of alternatives to the proposal.
 - (e) Its importance to the municipality and the extent to which its historical or architectural value is such that its removal would be detrimental to the public interest.
 - (f) The extent to which it is of such old, unusual or uncommon design, craftsmanship, texture or material that it could not be reproduced or could be reproduced only with great difficulty and expense.
 - (g) The extent to which its retention would promote the general welfare by maintaining and increasing real estate values, generating business, creating new jobs, attracting tourists, students, writers, historians, artists and artisans; attracting new residents, encouraging study and interest in American history, New Jersey history and the history of Atlantic Highlands; stimulating interest and study in architecture and design, educating citizens in American culture and heritage, or making the municipality a more attractive and desirable place in which to live.
 - (h) Such other matters as may appropriately affect the decision considering the specific characteristics of the property in question.
 - (i) The ownership, use and applicant's reason(s) for requesting demolition.
 - (j) Any other applicable standards of review or guidelines adopted by the Secretary of the U.S. Department of the Interior.
- (5) The Planning Board shall consider the following prior to approving a development plan which results in relocation of an historic building:
 - (a) The historic loss to the site of original location and the historic district as a whole.
 - (b) The compelling reasons for not retaining the landmark or structure at its present site.
 - (c) The compatibility, nature, and character of the current and the proposed surrounding areas as they relate to the protection of interest and values referred to in this section.
 - (d) The probability of significant damage to the landmark or structure itself.
 - (e) If it is to be moved from the Borough, the proximity of the proposed new location to the

Borough, including the accessibility to the residents of the municipality and other citizens.

- (f) If the proposed new location is within a district, visual compatibility factors as set forth in this section.

§ 150-84. General site design standards.

- A. Open space, historic structures. In subdivision and site design, the following areas shall be preserved as undeveloped open space or, in the case of historic structures, maintained within the development:
- (1) Wetlands as defined in Section 404, Federal Water Pollution Control Act Amendments of 1972, and delineated on wetlands maps prepared by the U.S. Fish and Wildlife Service, and/or N.J.A.C. 7:7A, the New Jersey Freshwater Protection Act rules, field-verified by an on-site inspection;
 - (2) Significant trees [defined as the largest known individual trees of each species in New Jersey as listed by the New Jersey Department of Environmental Protection (NJDEP) Bureau of Forestry; large trees approaching the diameter of the known largest tree; and/or species that are rare to that area or of particular horticultural or landscape value];
 - (3) Lands in the flood way or identified as V and A Zones on the Advisory Base Flood Elevation Map; [Amended 4-24-2013 by Ord. No. 07-2013]
 - (4) Steep slopes in excess of 15% as measured over a ten-foot interval unless appropriate engineering measures concerning slope stability, erosion, and resident safety are taken subject to the provisions of § 150-78 of this chapter.
 - (5) Habitats of endangered wildlife as identified on federal or state lists; and
 - (6) Landmark structures and sites as listed on the federal or New Jersey list of historic places or the Atlantic Highlands Master Plan.
- B. Residential lots shall front on local streets.
- C. Lot access. Every lot shall have access to it that is sufficient to afford a reasonable means of ingress and egress for emergency vehicles as well as for all those likely to need or desire access to the property for its intended use.
- D. The road system for residential subdivisions shall be designed to serve the needs of the neighborhood and to discourage use by through traffic.
- E. To the extent consistent with the reasonable utilization of land, site design shall promote the conservation of energy through the use of planning practices designed to reduce energy consumption and to provide for maximum utilization of renewable energy sources.
- F. Every lot shall be suitable for its intended use and shall contain a developable area which shall not be less than 80% of the minimum required lot area of the applicable zone district or 5,000 square feet, whichever is greater. The developable lot area shall be calculated by subtracting from the total lot area those portions of the lot which contain wetlands, wetlands buffers, drainage easements, conservation easements, and utility easements.

§ 150-85. Landscaping design standards.

- A. Purpose.

- (1) Landscaping shall be provided as part of site plan and subdivision design. It shall be conceived in a total pattern throughout the site, integrating the various elements of site design, preserving and enhancing the particular identity of the site and creating a pleasing site character.
 - (2) Landscaping may include plant materials such as trees, shrubs, ground cover, perennials, and annuals and other materials such as rocks, water, sculpture, art, walls, fences, and building and paving materials.
- B. Landscape plan. A landscape plan prepared by a certified landscape architect shall be submitted with each subdivision or site plan application, unless an exception is granted pursuant to Article III of these regulations. For minor subdivision or site plan applications, the landscape plan need not be prepared by a certified landscape architect. The plan shall identify existing wooded areas and existing trees six inches or greater caliper, and proposed trees, shrubs, ground cover, natural features, such as rock outcroppings, and other landscaping elements. The plan should show where they are or will be located and planting and/or construction details. When existing natural growth is proposed to remain, the applicant shall include in the plans proposed methods to protect existing trees and growth during and after construction.
- C. Site protection and general planting requirements.
- (1) Topsoil preservation. Topsoil moved during the course of construction shall be redistributed on all regraded surfaces. At least three inches of even cover shall be provided to all disturbed areas of the development and shall be stabilized by seeding or planting. If excess topsoil remains, the thickness shall be increased. If additional is required, the developer shall provide it. Removal of excess topsoil shall only be permitted in accordance with a plan approved by the Planning Board.
 - (2) Removal of debris. All stumps and other tree parts, litter, brush, weeds, excess or scrap building materials, or other debris shall be removed from the site and disposed of in accordance with the law. No tree stumps, portions of tree trunks or limbs shall be buried anywhere in the development. All dead or dying trees, standing or fallen, shall be removed from the site. If trees and limbs are reduced to chips, they may, subject to approval of the Municipal Engineer, be used as mulch in landscaped areas. A developer shall be exempt from these provisions, however, and shall be permitted to dispose of site-generated new construction wastes on site as long as the conditions set forth in N.J.A.C.7:26-1.7 are met.
 - (3) Protection of existing plantings. Maximum effort should be made to save fine specimens (because of size or relative rarity). The Planning Board may require submittal of a plan for the conservation of existing trees and shrubs. Such plans shall indicate which trees and shrubs are to be cleared and which shall be retained. All dogwood (*Cornus florida*) and American holly (*Ilex opaca*), having a trunk of one inch or greater at breast height, and all native laurel shrubs (*Kalmia latifolia*) shall be retained. No material or temporary soil deposits shall be placed within four feet of shrubs or 10 feet of trees designated to be retained on the preliminary and/or final plat. Protective barriers or tree wells shall be installed around each plant and/or group of plants that are to remain on the site. Barriers shall not be supported by the plants they are protecting, but shall be self-supporting. They shall be a minimum of four feet high and constructed of a durable material that will last until construction is completed. Snow fences and silt fences are examples of acceptable barriers.
 - (4) On major applications, a tree save plan shall be submitted for approval by the Planning Board. The plan shall include all trees and shrubs which are to be retained and any trees of six-inch caliper or greater which are to be removed. Protective devices for trees to remain shall be shown

on the plans.

- (5) Slope plantings. Landscaping of the area of all cuts and fills and/or terraces shall be sufficient to prevent erosion, and all roadway slopes steeper than one foot vertically to three feet horizontally shall be planted with ground covers appropriate for the purpose and soil conditions, water availability, and environment.
- (6) Additional landscaping.
 - (a) In residential developments, besides the screening and street trees required, additional plantings or landscaping elements shall be required throughout the subdivision where necessary for climate control, privacy, or for aesthetic reasons in accordance with a planting plan approved by the Planning Board. In nonresidential developments, all areas of the site not occupied by building and required improvements shall be landscaped by the planting of grass or other ground cover, shrubs, and trees as part of a site plan approved by the Planning Board.
 - (b) At a minimum, the equivalent of at least two shrubs and one shade or ornamental tree of two-and-one-half-inch caliper or greater shall be provided for each 1,500 square feet of area of a residential development not covered by buildings or improvements and for each 1,000 square feet of nonresidential development. Existing healthy specimen trees may be included in satisfying these requirements. These plantings shall be in addition to any other landscaping requirements including landscaping of off-street parking areas and buffer areas.
- (7) Planting specifications. Deciduous trees shall have at least a two-inch caliper at planting. Size of evergreens and shrubs shall be allowed to vary depending on setting and type of shrub. Only nursery-grown plant materials shall be acceptable; and all trees, shrubs, and ground covers shall be planted according to accepted horticultural standards. Dead or dying plants shall be replaced by the developer during the following planting season.
- (8) Plant species. The plant species selected should be hardy for the particular climatic zone in which the development is located and appropriate in terms of function and size.

D. Street trees.

- (1) Location.
 - (a) Street trees shall be installed on both sides of all streets in accordance with the approved landscape plan. Trees shall either be massed at critical points or spaced evenly along the street, or both.

Tree Size (feet)	Planting Interval (feet)
Large trees (40+)	50
Medium-sized trees (30 to 40)	40
Small trees (to 30)	30

- (b) If a street canopy effect is desired, trees may be planted closer together, following the recommendations of a certified landscape architect. The trees shall be planted so as not to

interfere with utilities, roadways, sidewalks, sight easements, or streetlights. Tree location, landscaping design, and spacing plan shall be approved by the Planning Board as part of the landscape plan.

- (2) Tree type. Tree type may vary depending on overall effect desired, but, as a general rule, all trees shall be the same kind on a street except to achieve special effects. Selection of tree type shall be approved by the Planning Board.
- (3) Planting specifications. All trees shall have a caliper of 2 1/2 inches and they shall be nursery grown, of substantially uniform size and shape, and have straight trunks. Trees shall be properly planted and staked and provision made by the applicant for regular watering and maintenance until they are established. Dead or dying trees shall be replaced by the applicant during the next planting season.

E. Buffering and screening.

- (1) Function and materials. Buffering shall provide a year-round visual screen in order to minimize adverse impacts from a site on an adjacent property or from adjacent areas. It may consist of fencing, evergreens, berms, rocks, boulders, mounds, or combinations to achieve the stated objectives.
- (2) When required. All uses, other than single-family detached and two-family detached dwellings and their accessory uses, shall provide buffers along side and rear property lines which abut areas zoned residentially or used for residential purposes. Buffering shall also be required when topographical or other barriers do not provide reasonable screening and when the Planning Board determines that there is a need to shield the site from adjacent properties and to minimize adverse impacts such as incompatible land uses, noise, glaring light, and traffic. In dense developments, when building design and siting do not provide privacy, the Planning Board may require landscaping, fences, or walls to ensure privacy and screen dwelling units. Where required, buffers shall be measured from property lines.
 - (a) Buffer strips shall be 25 feet wide but need not exceed 10% of the lot area. Where a twenty-five-foot wide buffer is infeasible because of established development patterns, the board may consider alternative designs that would create an effective buffer.
 - (b) In addition to any required buffer, parking areas, garbage collection, utility areas and loading and unloading areas should be screened around their perimeter by a strip a minimum five feet wide. This screening strip may be omitted when areas cited are adjacent to a twenty-five-foot-wide buffer.
 - (c) It is preferred that residential lots abut and have access from local streets. When they must abut higher-order streets, a landscaped buffer area shall be provided along the property line abutting the road. The buffer shall have a minimum width equal to the required front yard setback of the lot. The portion of the lot within the buffer strip shall not be included in determining minimum lot area. Yard setbacks shall be measured from the buffer strip limit.
- (3) Design. Arrangement of planting in buffers shall provide maximum protection to adjacent properties and avoid damage to existing plant material. Possible arrangements include planting in parallel, serpentine, or broken rows. If planted berms are used, the minimum top width shall be four feet, and the maximum side slope shall be 2:1.

- (4) Planting specifications. Plant materials shall be sufficiently large and planted in such a fashion that a screen at least eight feet high, occupying 50% of the width of the buffer strip, shall be produced within three growing seasons. All plantings shall be installed according to accepted horticultural standards.
- (5) Maintenance. Plantings shall be watered regularly and in a manner appropriate for the specific plant species through the first growing season, and dead or dying plants shall be replaced by the applicant during the next planting season. No buildings, structures, storage of materials, or parking shall be permitted within the buffer area; buffer areas shall be maintained and kept free of all debris, rubbish, weeds, and tall grass.

F. Parking lot landscaping.

- (1) Amount required. In parking lots, at least 5% of the interior parking area shall be landscaped with plantings, and one tree for each five spaces shall be installed. Parking lot street frontage screening and perimeter screening shall be a minimum of five feet wide. Planting required within the parking lot is exclusive of other planting requirements, such as for street trees.
- (2) Location. The landscaping should be located in protected areas, such as along walkways, in center islands, at the end of bays, or in diamonds between parking stalls. All landscaping in parking areas and on the street parking lot is exclusive of other planting requirements, such as for street trees.
- (3) Plant type. A mixture of hardy flowering and/or decorative evergreen and deciduous trees may be planted; the area between trees shall be planted with shrubs or ground cover or covered with mulch.

G. Paving materials and walls and fences.

- (1) Paving materials. Design and choice of paving materials used in pedestrian areas shall consider the following factors: cost, maintenance, use, climate, characteristics of users, appearance, availability with surroundings, decorative quality, and aesthetic appeal. Acceptable materials shall include, but are not limited to, concrete, brick, cement pavers, asphalt and stone.
- (2) Walls and fences shall be erected where required for privacy, screening, separation, security, or to serve other necessary functions.
 - (a) Design and materials shall be functional, they shall complement the character of the site and type of building, and they shall be suited to the nature of the project.
 - (b) No fence or wall shall be so constructed or installed so as to constitute a hazard to traffic or safety.

H. Street furniture.

- (1) Street furniture such as, but not limited to, trash receptacles, benches, phone booths, etc., shall be located and sized in accordance with their functional needs.
- (2) Street furniture elements shall be compatible in form, material, and finish. Style shall be coordinated with that of the existing or proposed site architecture.
- (3) Selection of street furniture shall consider durability, maintenance, and long-term cost.

§ 150-86. Recycling and solid waste design standards.

In order to ensure that future development is designed to accommodate the recycling of solid waste, site plan, subdivision applications shall adhere to the following:

- A. Materials designated in Borough of Atlantic Highlands Chapter 300, Solid Waste, Article V, Recycling, shall be separated from other solid waste by the generator, and a storage area for recyclable material shall be provided as follows:
 - (1) For major applications, each single- or two-family unit shall provide a storage area of at least 12 square feet within each dwelling unit to accommodate a four-week accumulation of mandated recyclables (including, but not limited to: newspaper, glass bottles, aluminum cans, tin and bimetal cans). The storage area may be located in the laundry room, garage, basement or kitchen.
 - (2) For major applications, each multifamily unit shall provide a storage area of at least three square feet within each dwelling unit to accommodate a one-week accumulation of mandated recyclables (including, but not limited to: newspaper, glass bottles, aluminum cans, tin and bimetal cans). The storage area may be located in the laundry room, garage, or kitchen. Unless recyclables are collected on a weekly basis from each dwelling unit, one or more common storage areas must also be provided at convenient locations within the development.
 - (3) Each application for a nonresidential use which utilizes 1,000 square feet or more of land shall provide the Planning Board with estimates of the quantity of mandated recyclable materials (including, but not limited to: newspaper, glass bottles, aluminum cans, tin and bimetal cans, high-grade paper, and corrugated cardboard) that will be generated by the development during each week. A separated storage area must be provided to accommodate a one-week to four-week's accumulation of recyclable material. The Planning Board may require the location of one or more common storage areas at convenient locations within the development.
- B. Common storage or holding areas shall be designed to accommodate truck access and shall be suitably screened as required by § 150-85E(2). It is preferred that solid waste collection areas be adjacent to but separate from recyclable storage areas.
- C. The applicant shall submit sufficient details of the solid waste and recyclables to be generated by any application to allow the Planning Board to reach an affirmative conclusion that proposed provisions are sufficient.
- D. The Planning Board, in the interpretation/enforcement of this section, may seek and rely upon the opinions of the Director of Public Works and/or the Municipal Recycling Coordinator.

§ 150-87. Open space and recreation design standards.

Multidevelopment shall be required to provide open space.

- A. Minimum requirements.
 - (1) Amount of open space required. At least 30% of the developable acreage of a tract proposed for development shall be set aside as common open space.
 - (2) Size of open space parcels. The area of each parcel of open space designed for recreational purposes shall be of such minimum dimensions as to be functionally usable.

- (3) Location of open space parcels. Open space parcels should be convenient to the dwelling units they are intended to serve.
- B. Recreation improvements.
- (1) Passive recreation areas, such as pathways, seating areas and lawns, shall be provided and suitably arranged in a multifamily site.
 - (2) Recreation areas shall be provided at the rate of at least 250 square feet per dwelling unit. If a swimming pool area or areas are to be installed, they are to include a pool of a size at least equivalent to 15 square feet per unit, except no pool less than 500 square feet will be allowed, and no pool greater than 3,000 square feet shall be required. An auxiliary building or buildings providing for lavatories and storage shall also be erected in conjunction with pools.
- C. Deed restrictions. Any lands dedicated for open space purposes shall contain appropriate covenants and deed restrictions approved by the Planning Board that ensure that:
- (1) The open space area will not be further subdivided in the future.
 - (2) The use of the open space will continue in perpetuity for the purpose specified.
 - (3) Appropriate provisions are made for the maintenance of the open space.
 - (4) Common undeveloped open space shall not be turned into a commercial enterprise admitting the general public at a fee.
- D. Open space ownership. The type of ownership of land dedicated for open space purposes shall be selected by the owner, developer, or subdivider, subject to the approval of the Planning Board. Type of ownership may include, but is not necessarily limited to, the following:
- (1) The municipality, subject to acceptance by the governing body.
 - (2) Other public jurisdictions or agencies, subject to their acceptance.
 - (3) Quasi-public organizations, subject to their acceptance.
 - (4) Homeowner, condominium, or cooperative associations or organizations.
 - (5) Shared, undivided interest by all property owners in the subdivision.
- E. Homeowners' association. If the open space is owned and maintained by a homeowner or condominium association, the developer shall file a declaration of covenants and restrictions that will govern the association, to be submitted with the application for the preliminary approval. The provisions shall include, but are not necessarily limited to, the following:
- (1) The homeowners' association must be established before the homes are sold.
 - (2) Membership must be mandatory for each home buyer and any successive buyer.
 - (3) The open space restrictions must be permanent, not just for a period of years.
 - (4) The association must be responsible for liability insurance, local taxes, and the maintenance of recreational and other facilities.
 - (5) Homeowners must pay their pro rata share of the costs; the assessment levied by the association shall become a lien on the property and be so stated in the master deed establishing the

homeowners' association.

- (6) The association must be able to adjust the assessment to meet changed needs.

F. Maintenance of open space areas.

- (1) In the event that a nonmunicipal organization with the responsibility for the open space fails to maintain it in reasonable order and condition, the Borough Council may serve written notice upon such organization or upon the owners of the development setting forth the manner in which the organization has failed to maintain the open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be remedied within 35 days thereof and shall state the date and place of a hearing thereon which shall be held within 15 days of the notice.
- (2) At such hearing, the Borough Council may modify the terms of the original notice as to deficiencies and may give a reasonable extension of time not to exceed 65 days within which they shall be remedied. If the deficiencies set forth in the original notice or in the modification thereof shall not be remedied within said 35 days or any permitted extension thereof, the municipality, in order to preserve the open space and maintain the same, may enter and maintain such land for a period of one year. Said entry and maintenance shall not vest in the public any rights to use the open space except when the same is voluntarily dedicated to the public by the owners. Before the expiration date of said year, the Borough Council shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the open space, call a public hearing upon 15 days' written notice to such organization and to the owners of the development, to be held by the Borough Council at which hearing such organization and the owners of the development shall show cause why such maintenance by the municipality shall not, at the election of the municipality, continue for a succeeding year. If the Borough Council shall determine that such organization is ready and able to maintain said open space in reasonable condition, the municipality shall cease to maintain said open space at the end of said year. If the Borough Council shall determine such organization is not ready and able to maintain said open space in a reasonable condition, the municipality may, in its discretion, continue to maintain said open space during the next succeeding year, subject to a similar hearing and determination, in each year thereafter. The decision of the municipal body or officer in any such case shall constitute a final administrative decision subject to judicial review.
- (3) The cost of such maintenance by the municipality shall be assessed pro rata against the properties within the development that have a right to enjoyment of the open space in accordance with assessed value at the time of imposition of the lien and shall become a lien and tax on said properties and be added to and be a part of the taxes to be levied and assessed thereon, and shall be enforced and collected with interest by the same officers and in the same manner as other taxes.

ARTICLE IX

Improvement Standards, Specific Criteria and Construction Specifications**§ 150-88. Purpose.**

- A. The purpose of this article is to set forth improvement standards and construction specifications for developments. Where a standard in this article is referenced as a requirement by Article V, Zoning District Regulations, or by Article VI, Conditional Uses, or by Article VII, General Zoning Provisions, then a deviation from the specified standard shall only be permitted when a variance is granted pursuant to N.J.S.A. 40:55D-70. In all other cases, relief may only be authorized as an exception to subdivision or site plan regulations pursuant to N.J.S.A. 40:55D-51.
- B. A subdivision and/or site plan shall conform to standards that will result in a well-planned community, protect the health and safety of the residents, and provide a desirable living environment without unnecessarily adding to development costs. The following improvements shall be required: streets and circulation, off-street parking, water supply, sanitary sewers, and stormwater management.

§ 150-89. Improvement standards.

A. Streets.

(1) Street opening permit required.

- (a) It shall not be lawful for any person or persons or corporation or corporations to tear up or excavate any of the streets or roads or other public places, or any part thereof in the Borough of Atlantic Highlands, County of Monmouth, for the purpose of laying, replacing or repairing water, gas or sewer pipes or for any other reason whatsoever without first obtaining from the Municipal Clerk a permit thereof, which permit shall be in writing, signed by the Municipal Clerk, and shall state as nearly as practicable where said tearing up or excavating is to be done, said permit shall further contain the stipulation that it is issued upon express understanding and agreement that the applicant therefor shall replace the surface of said road or street in as good condition and with the earth or other road material well packed; and upon the further understanding that should said applicant fail to replace the surface of said road or street in as good condition as before with the earth or other road material well packed, then the Borough shall do said work and charge said applicant therefor, and said applicant shall pay the same upon being presented with an itemized account thereof.
- (b) The Borough shall be the sole judge as to whether said work of replacement is done properly or not and whether the surface of said road or street is in as good condition as before with the earth or other road material well packed down, and in the event the work is not properly done the Borough may do said work without notice to the applicant.
- (c) Said applicant shall further, before receiving such permit, pay to the Municipal Clerk such sum as provided in Chapter 168, Article II, in cash or certified check for the replacement of surface of the street or road which has been torn up or excavated by said applicant.²²⁸
- (d) In lieu of said deposit, said applicant, at his or its option, may give a bond to said Borough in the sum of \$500 for one year with surety or sureties, corporate or otherwise, as the Council shall approve, conditioned for the payment from time to time of the expenses of

228.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

repairing or replacing any and all such streets or roads or public places, or parts thereof, so torn up or excavated by the applicant upon permits therefor, as aforesaid, forthwith upon the delivery to the applicant of itemized accounts of such expenses.

- (e) The Municipal Clerk is hereby authorized to issue such permit hereinbefore mentioned and to collect from the applicant the sum as provided in Chapter 168, Article II, for the cost and expense of issuing same.²²⁹
 - (f) Whenever any person or persons, or corporation or corporations, shall have authority under any contract with said Borough or any officer thereof, or under any permit authorizing same, to tear up or excavate any of the streets or roads in said Borough, so as to obstruct and prevent same from being used for the time being for the purpose of travel, such person or persons, corporation or corporations, shall place or caused to be placed in conspicuous positions where such work is being done, at twilight in the evening, suitable and sufficient lights, and keep them burning through the night, until a replacement of said road is made, and shall take all necessary precautions to save the traveling public from any and all danger by reason of said work, and it is understood that such permit and authority from the Borough for any of said work shall not relieve said applicant from any responsibility to any person for any accident that may arise from said work.
 - (g) These regulations shall not apply to any employee or agent of the Borough of Atlantic Highlands while performing said work as an agent or employee of said Borough of Atlantic Highlands.
 - (h) Each and every person violating any of the provisions of these regulations shall, upon conviction thereof, be subject to a penalty as provided in Chapter 1, Article II, General Penalty.²³⁰
- (2) General.
- (a) The arrangement of streets shall conform to the Master Plan.
 - (b) For streets not shown on the Master Plan or Official Map, the arrangement shall provide for the appropriate extension of existing streets.
 - (c) Streets shall be arranged so as to discourage through traffic and provide for maximum privacy.
 - (d) All subdivisions and/or site plan applications shall be designed in order to achieve:
 - [1] Conformity with the State Highway Access Management Code adopted by the Commissioner of Transportation under § 3 of the State Highway Access Management Act, P.L. 1989, c. 32 (N.J.S.A. 27:7-91), with respect to any state highways within the municipality.
 - [2] Conformity with any access management code adopted by the county under N.J.S.A. 27:16-1, with respect to any county roads within the municipality;
 - [3] Conformity with any municipal access management code adopted under N.J.S.A. 40:67-1, with respect to municipal streets.

229.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

230.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

(3) Street hierarchy.

- (a) Streets shall be classified in a street hierarchy system with design tailored to function.
- (b) The street hierarchy system shall be defined by road function and traffic. The following classification shall be utilized in the Borough and each proposed street shall be classified and designed for its entire length to meet the described standards.

[1] Collector streets collect traffic from local streets and channel it into the system of arterial highways. The right-of-way width for collector streets within the jurisdiction of the Borough is 60 feet. The right-of-way shall have a cartway width of at least 40 feet to allow for two twelve-foot-wide moving lanes and two eight-foot-wide parking lanes. In addition, the right-of-way width shall allow for curb, sidewalk, utility, and shade tree installation.

[2] Local streets provide frontage for access to lots and carry traffic having destination or origin on the street itself. The minimum right-of-way width for local streets is 50 feet. The right-of-way shall have a cartway width of either 36 feet or 30 feet as recommended by the Borough Engineer. In addition, the right-of-way width shall allow for curb, sidewalk, utility, and shade tree installation. Any street not designated as a collector street is a local street.

- (4) Cartway width. The determination as to cartway width shall also consider possible limitations imposed by sight distances, climate, terrain, and maintenance needs. The Planning Board may require increases or decreases in cartway width where appropriate.

(5) Curbs and gutters.

- (a) Curbing shall be required for drainage purposes, safety, and delineation and protection of pavement edge.
- (b) Curbs shall be constructed according to the specifications set forth in the construction specifications.²³¹
- (c) Curbing shall be designed to provide a ramp for bicycle and/or wheel chairs as required.
- (d) Curbing shall be provided along both sides of subdivision streets, and adjacent to the edge of all aisles, drives and off-street parking areas.

(6) Shoulders.

- (a) Shoulders and/or drainage swales shall be required instead of curbs when:

[1] Shoulders are required by CAFRA;

[2] Soil and/or topography make the use of shoulders and/or drainage swales preferable; and/or

[3] It is in the best interest of the community to preserve its character by using shoulders and/or drainage swales instead of curbs.

- (b) Shoulder requirements shall vary according to street hierarchy and intensity of

231.Editor's Note: See § 150-90, Construction specifications.

development.

- (c) Shoulders may consist of reduced pavement section or after construction approved by the Planning Board.

(7) Sidewalks.

- (a) Sidewalks shall be placed in the right-of-way, parallel to the street within the right-of-way, unless an exception has been permitted to preserve topographical or natural features, or to provide visual interest, or unless the applicant shows that an alternative pedestrian system provides safe and convenient circulation. In commercial and more intensely developed residential areas, sidewalks may abut the curb.
- (b) Pedestrian way easements a minimum of 10 feet wide may be required by the Planning Board through the center of blocks more than 600 feet long to provide circulation or access to schools, playgrounds, shopping, or other community facilities. Easements may also be required to link with or as part of any trail or path system provided for within the Borough Master Plan.
- (c) Sidewalk width shall be four feet; wider widths may be necessary near pedestrian generators and employment centers. Where sidewalks abut the curb and cars overhang the sidewalk, widths shall be six feet.
- (d) Sidewalks and graded areas shall be constructed according to the specifications set forth in the construction specifications.²³²
- (e) Sidewalks shall be provided on both sides of all streets and throughout site development for ease of pedestrian access.

(8) Bikeways.

- (a) Separate bicycle paths shall be required only if such paths have been specified as part of a municipality's adopted Master Plan.
- (b) Bicycle lanes, where required, shall be placed in the outside lane of a roadway, adjacent to the curb or shoulder. When on-street parking is permitted, the bicycle lane shall be between the parking lane and the outer lane of moving vehicles. Lanes shall be delineated with markings, preferably striping. Raised reflectors or curbs shall not be used.
- (c) Bikeways shall be constructed according to the specifications set forth in the construction specifications.²³³

(9) Utility and shade tree areas.

- (a) Utilities and shade trees shall generally be located within an easement area outside the right-of-way on both sides of and parallel to the street right-of-way.
- (b) Utility and shade tree areas shall be planted with grass, ground cover, or treated with other suitable cover material.
- (c) Utility and shade tree easements of at least 10 feet wide on both sides of the street shall be

232.Editor's Note: See § 150-90, Construction specifications.

233.Editor's Note: See § 150-90, Construction specifications.

provided.

(10) Right-of-way.

- (a) The right-of-way shall be measured from lot line to lot line and shall be sufficiently wide to contain the cartway, curbs, shoulders, sidewalks, graded areas, utilities and shade trees. (See Subsection A(2).)
- (b) The right-of-way width of a new street that is a continuation of an existing street shall in no case be continued at a width less than the existing street.
- (c) The right-of-way shall reflect future development as indicated by the Master Plan.

(11) Street grade and intersections.

- (a) Street grade and intersection design shall be according to the standards and specifications set forth in this section.

(12) Pavement.

- (a) Street pavement thickness shall vary by street hierarchy, subgrade conditions and pavement type as set forth in this section.

(13) Lighting.

- (a) Lighting shall be provided in accordance with a plan designed by the utility company, or using as a guideline the standards set forth by IES Lighting Handbook shown in the construction specifications.²³⁴
- (b) Lighting for safety shall be provided at intersections, along walkways, at entryways, between buildings, and in parking areas.
- (c) Spacing of standards shall be equal to approximately four times the height of the standard.
- (d) The maximum height of standards shall not exceed the maximum building height permitted or 25 feet, whichever is less.
- (e) The height and shielding of lighting standards shall provide proper lighting without hazard to drivers or nuisance to residents, and the design of lighting standards shall be of a type appropriate to the development and the municipality.
- (f) Spotlights, if used, shall be placed on standards pointing toward the buildings and positioned so as not to blind the residents, rather than on the buildings and directed outward which creates dark shadows adjacent to the buildings.

(14) Underground wiring.

- (a) All electric, telephone, television, and other communication facilities, both main and service lines servicing new developments, shall be provided by underground wiring within easements or dedicated public right-of-way, installed in accordance with the prevailing standards and practices of the utility or other companies providing such services.
- (b) Lots which abut existing easements or public rights-of-way where overhead electric or

234.Editor's Note: See § 150-90, Construction specifications.

telephone distribution supply lines and service connections have heretofore been installed may be supplied with electric and telephone service from those overhead lines, but the service connections from the utilities' overhead lines shall be installed underground. In the case of existing overhead utilities, should a road widening, or an extension of service, or other such condition occur as a result of the subdivision and necessitate the replacement or relocation of such utilities, such replacement or relocation shall be underground.

- (c) Where overhead lines are permitted as the exception, the placement and alignment of poles shall be designed to lessen the visual impact of overhead lines as follows. Alignments and pole locations shall be carefully routed to avoid locations along horizons; clearing swaths through treed areas shall be avoided by selective cutting and a staggered alignment; trees shall be planted in open areas and at key locations to minimize the view of the poles and the alignments; and alignments shall follow rear lot lines and other alignments.
- (d) Year-round screening of any utility apparatus appearing above the surface of the ground, other than utility poles, shall be required.

(15) Traffic signs.

- (a) Design and placement of traffic signs shall follow the requirements specified in the Manual on Uniform Traffic Control Devices for Streets and Highways, published by the U.S. Department of Transportation and adopted by the New Jersey Department of Transportation.
- (b) At least two street name signs shall be placed at each four-way street intersection and one at each "T" intersection. Signs shall be installed under light standards and free of visual obstruction. The design of street name signs should be consistent, of a style appropriate to the community, of a uniform size and color, and erected in accordance with local standards.
- (c) Site information signs shall follow a design theme related and complementary to other elements of the overall site design.

B. Off-street parking.

(1) Number of spaces.

- (a) Off-street parking spaces shall be required in all developments to accommodate residents and visitors.
- (b) For residential developments, off-street parking shall be provided as set forth in Exhibit 9-1.²³⁵
- (c) For nonresidential developments, the parking standards shown in Exhibit 9-2²³⁶ shall be used as a guideline.
- (d) Alternative off-street parking standards shall be accepted only if the applicant demonstrates that these standards better reflect local conditions.

²³⁵.Editor's Note: See § 150-89B(1)(h).

²³⁶.Editor's Note: See § 150-89B(1)(h).

- (e) The Planning Board may require the use of alternative standards if it determines that standards of these regulations are insufficient or a particular development has a unique parking requirement. The basis for such a determination shall be documented by the Planning Board in its minutes.
- (f) All required residential parking shall be located behind the front yard setback line. A garage shall only be counted as off-street parking where the access driveway is at least 30 feet long or where the Planning Board agrees to accept such garage space as meeting requirements.
- (g) Where the total number of off-street parking spaces required may not be immediately required for a particular use, a staged development plan may be permitted which requires that only a portion of the parking area, but not less than 65% of the required spaces, be completed initially, subject to the following regulations:
 - [1] The site plan shall clearly indicate both that portion of the parking area to be initially paved and the total parking needed to provide the number of spaces required.
 - [2] The site plan shall provide for adequate drainage of both the partial and total parking areas.
 - [3] The portion of the parking area not to be paved initially shall be landscaped in accordance with Article VIII.
 - [4] The applicant shall post separate performance guarantees, in addition to the performance guarantees required under Article X, which shall reflect the cost of installing the additional parking facilities necessary to provide the total number of parking spaces required.
 - [5] In lieu of a permanent certificate of occupancy, a temporary certificate of occupancy shall be issued for a period of two years. Prior to the expiration of the two-year period, the applicant may either install the additional parking spaces shown on the site plan and apply for issuance of a permanent certificate of occupancy or apply to the Planning Board after the use has been in operation a minimum of 18 months for a determination as to whether or not the initial parking area provided is adequate. If the Planning Board determines that the parking facility is adequate as originally constructed, the performance guarantees shall be released and a permanent certificate of occupancy issued. If, however, the Planning Board determines that the partial off-street parking area is not adequate, the applicant shall be required to install the additional parking facilities in accordance with the terms of the performance guarantees prior to issuance of a permanent certificate of occupancy.
 - [6] Any change of use on a site for which the Planning Board may have approved a partial paving of off-street parking areas to a use which requires more parking spaces than are provided on the site shall require submission of a new site plan.
- (h) The number of parking spaces required pursuant to Exhibits 9-1 and 9-2 shall include the number of accessible parking spaces as required by § 150-89B(4) of this chapter.

Exhibit 9-1
Off-Street Parking Requirements for Residential Land Uses

Housing Unit (type/size)	Off-Street Parking Requirement (number of spaces)
Single-family detached	
1 bedroom	1.5
2 bedrooms	2.0
3 bedrooms	2.0
4 bedrooms (or more)	3.0
Garden apartment	
1 bedroom	1.8
2 bedrooms	2.0
3 bedrooms	2.1
Townhouse	
1 bedroom	1.8
2 bedrooms	2.3
3 bedrooms	2.4
Mid-rise	
Studio	0.8
1 bedroom	1.3
2 bedrooms	1.9
Senior citizen housing	
For each unit	0.5
For each 2 units	1.0

Exhibit 9-2
Off-Street Parking Requirements¹ for Nonresidential Land Uses

Nonresidential Land Uses	Required Off-Street Parking Spaces Per Indicated Area
Banks and savings and loan associations	1 per 200 square feet GFA plus room for 12 cars per drive-up window and/or lane
Bar, tavern, or similar	1 per 2 seats or 1 per 100 square feet GFA (whichever is greater)
Community club, private club lodge	1 per 100 square feet GFA

Exhibit 9-2**Off-Street Parking Requirements¹ for Nonresidential Land Uses**

Nonresidential Land Uses	Required Off-Street Parking Spaces Per Indicated Area
Commercial recreation:	
Indoor	1 per 50 square feet GFA
Outdoor	1 per 4 spectators, based on maximum capacity, and 3 per 10,000 square feet outdoor play area
Dental or medical office	1 per 100 square feet GFA.
Industrial, light manufacturing and wholesaling	1 per employee per shift
Library	1 per 300 square feet GFA
Marina, boat yard, boat sales; meeting rooms, assembly or public auditorium; motel, hotel, rooming house; motor vehicle service station; offices ²	1 per boat slip; 1 per 50 square feet of GFA or 1 per 4 seats, whichever is greater; 1 per room plus 0.5 per employee; 4 per bay or work area
Business ¹⁽⁴⁾ :	
Under 10,000 GFA	4.5 per 1,000 square feet GFA
Other	4.0 per 1,000 square feet GFA
Outdoor sales area	1 per 2,000 square feet lot area used for storage
Places of worship	1 per 3 seats
Restaurant	1 per 3 seats or 1 per 50 square feet GFA, whichever is greater
Retail store or personal service establishment	1 per 200 square feet GFA
Schools:	
Elementary	1 per teacher and staff
Intermediate	1 per teacher and staff
Secondary	1 per 3 students
Shopping center ³	1 per 250 square feet GFA
Studio, art, music, dance, for purpose of giving instruction	1 per 100 square feet GFA
Theater	1 per 3 seats
In shopping center	1 per 4 seats

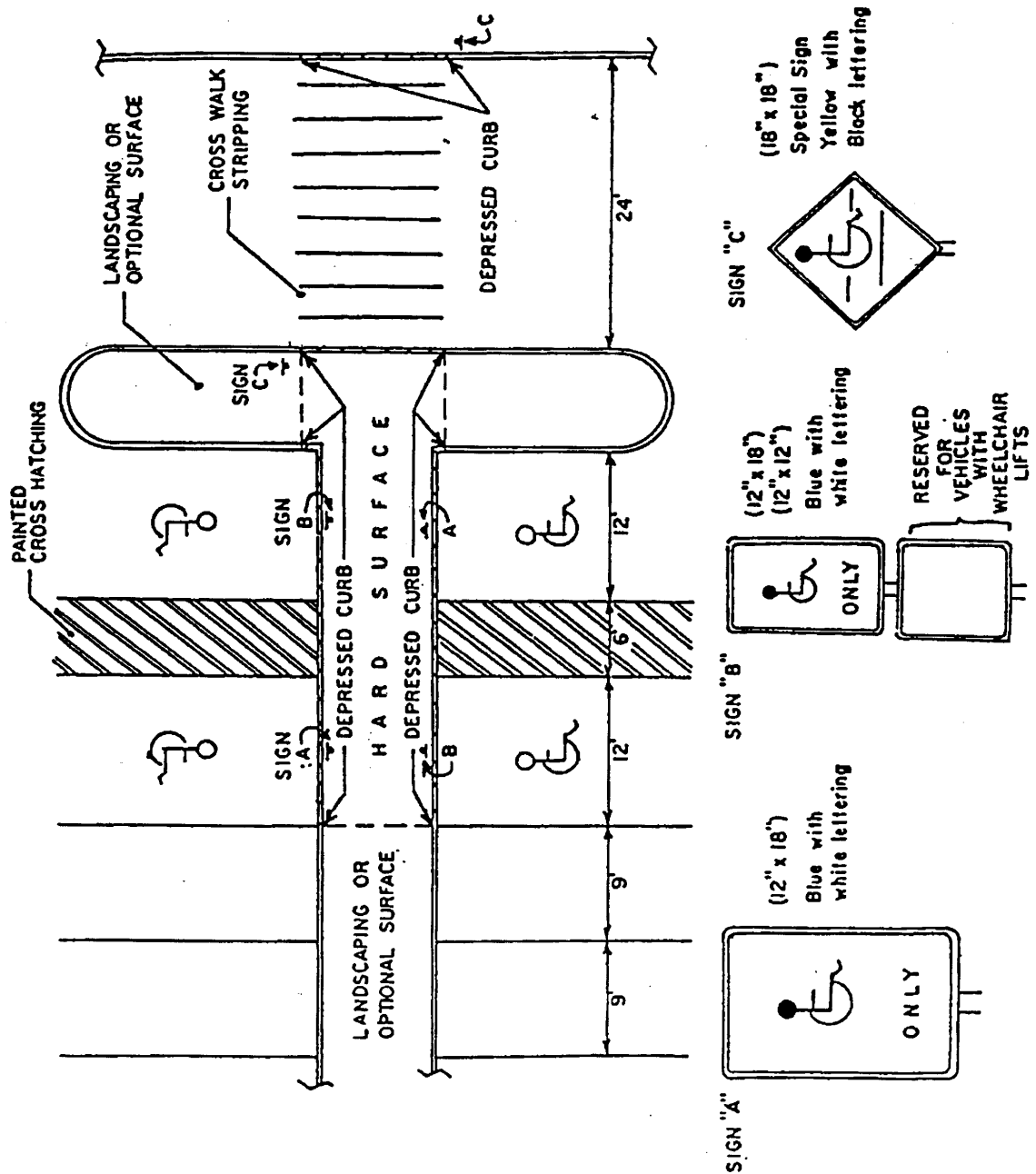
Exhibit 9-2**Off-Street Parking Requirements¹ for Nonresidential Land Uses**

Nonresidential Land Uses	Required Off-Street Parking Spaces Per Indicated Area
Warehouse	1 per 5,000 square feet GFA

NOTES:

- ¹ In computing the number of required parking spaces, the following shall apply:
 - (1) Where fractional spaces result, the required number shall be construed to be the next highest whole number.
 - (2) The parking space requirements for a use not specifically mentioned herein shall be the same as required for a use of similar nature as determined by the Planning Board.
 - (3) If there is no use enumerated herein having sufficient similarity to the use proposed to enable the Planning Board to establish rational parking requirements, the Planning Board may, in its discretion, direct the applicant to furnish the Planning Board with such data as may be necessary to enable the Planning Board to establish rational parking requirements.
 - (4) Where there is a mixed use, the number of spaces shall equal the sum of those spaces required for each use when calculated separately.
 - ² A building of mixed office uses may include a maximum of 1/3 medical or dental floor area. If medical or dental uses exceed 1/3 of the gross floor area, their parking requirement shall be computed separately.
 - ³ If more than 25% of the total floor area is occupied by a nonretail use which has off-street parking requirements greater than those required for a shopping center, then off-street parking for the center shall be the same as the required minimum for the nonretail use plus the required minimum for the balance of the shopping center floor area.
- (2) Size of spaces. Each off-street parking space shall measure at least nine feet in width by 18 feet in length. Parking spaces for the physically handicapped shall be 12 feet wide and 20 feet long. Striping of handicapped spaces shall conform to the detail provided in Exhibit 9-3.

**Exhibit 9-3
Handicapped Parking and Sign Detail**



(3) Parking areas.

- (a) Off-street parking areas shall be oriented to and within a reasonable walking distance of the buildings they are designed to serve. This distance shall be a maximum of 700 feet for employee parking; 400 feet for shoppers; 250 feet for residents; and 300 feet for guests.
- (b) Access to parking lots shall be designed so as not to obstruct free flow of traffic. There

shall be adequate provision for ingress to and egress from all parking spaces to ensure ease of mobility, ample clearance, and safety of vehicles and pedestrians.

- (c) The width of all aisles providing direct access to individual parking stalls shall be in accordance with the requirements specified below. Only one-way traffic shall be permitted in aisles serving single-row parking spaces placed at an angle other than 90°. It may be necessary to adjust aisle width and/or space length to provide minimum parking bay width. Parking angles less than 45° are not encouraged.

**Double Minimum Parking
Bay Width
(feet)**

Parking Angle (degrees)	Normal	Long Term	Minimum Aisle Width (feet)
30	48	46	12
45	50	48	13
60	55	53	18
90	62	60	24

- (d) Where sidewalks occur in parking areas, parked vehicles shall not overhang or extend over the sidewalk unless an additional two feet of sidewalk width are provided in order to accommodate such overhang.
- (e) Parking areas shall be suitably landscaped to minimize noise, glare and other nuisance characteristics as well as to enhance the environment and ecology of the site and surrounding area. Parking lots containing more than 100 spaces shall be broken down into sections of smaller lots of 50 spaces separated from other sections by landscaped dividing strips, berms, and similar elements.
- (f) For all multiple dwellings and nonresidential uses, the perimeter of all parking areas, internal islands, and planting areas shall have continuous cast-in-place concrete curbing in accordance with the construction specifications.²³⁷ All parking areas, aisles, and accessways for multiple dwellings and nonresidential uses shall be surfaced with a properly designed all-weather pavement in accordance with the construction specifications.
- (4) Handicapped parking spaces.
- (a) In accordance with N.J.A.C. 5:23-7 et seq., every parking lot or parking garage shall have at least the number of accessible parking spaces for the handicapped as set forth below:

237.Editor's Note: See § 150-90, Construction specifications.

Accessible Parking Spaces

Total Parking In Lot	Required Number of Accessible Spaces
Up to 50	1
51 to 200	2
Over 200	2 plus 1% of the number of spaces over 200 rounded to the next higher whole number
Parking facility serving long-term care facility	2% of the spaces but not less than 2

- (b) Typical arrangements of handicapped spaces is shown in Exhibit 9-3.²³⁸ Other arrangements are possible which will conform to handicapped parking standards and good design goals.
- (5) Location of parking.
- (a) Parking is only permitted in parking areas and drives intended for that purpose. Parking is not permitted in lawns or other unimproved areas.
 - (b) Required parking shall be in parking areas shown on an approved site plan.
 - (c) Parking areas shall not be located in any required front yard.
 - (d) Required parking for nonresidential users may be located in garages provided there is a driveway at least 30 feet long to each garage. If the drive is less than 30 feet long, the garage shall be counted as 0.5 of a space.
 - (e) Off-street parking space to be provided as specified in Exhibits 9-1 and 9-2²³⁹ shall be provided with necessary passageways and driveways. All such space shall be deemed to be required space on the lot on which the principal use is situated, except as modified in Subsection B(5)(f) below, and shall not thereafter be encroached upon or reduced in any manner. Such parking areas shall be surfaced with a dustless, durable, all-weather pavement, clearly marked for car spaces, except when provided in connection with one-family or two-family uses, and shall be adequately drained, subject to the approval of the Borough Engineer.
 - (f) The collective provision of off-street parking facilities by two or more buildings or uses in any zone is permitted provided the total of such off-street parking facilities shall not be less than the sum of the requirement for the various individual uses computed separately in accordance with the standards contained in this chapter, and further provided that the land is owned by one or more of the collective users.
 - (g) Parking areas and driveways thereto required for multifamily dwellings, commercial or industrial uses shall be adequately illuminated during operating hours which occur after sunset. Any adjacent residential zones shall be adequately shielded from the glare of said

²³⁸.Editor's Note: See § 150-89B(2).

²³⁹.Editor's Note: See § 150-89B(1)(h).

illumination and that of automobile headlights.

- (h) No parking area for a use in the LI, MR, HB or CBD Zone may be located in any other zone. However, parking areas for the HBD and WB Zones may be located in any zone other than a single-family district, provided that said area is within 100 feet of the HBD or WB Zone, and provided that parking for residential uses in the HBD Zone must be provided on site. **[Amended 2-22-2024 by Ord. No. 03-2024]**
- (i) In the HBD Zone, the off-street parking requirement for nonresidential uses may be satisfied in whole or in part by evidence that the required amount of parking has been or will be provided in public parking lots available for use of the general public. Such parking space, for commercial purposes, shall be located within 300 feet walking distance of the principal use as measured from the geometric center of the parking facility located on Railroad Avenue, but in no case shall the parking areas be on the opposite side of State Highway 36 from the principal use. The public parking lots shall not be used for any such calculation for needed residential parking requirements.²⁴⁰ **[Amended 11-10-2004 by Ord. No. 16-2004; 5-26-2010 by Ord. No. 11-2010; 6-27-2018 by Ord. No. 07-2018; 2-22-2024 by Ord. No. 03-2024]**

C. Required loading spaces.

- (1) Off-street commercial and industrial loading areas shall be provided so as to permit the transfer of goods in other than a public right-of-way. A loading unit is hereby defined as a space 12 feet in width, 30 feet in length and 14 feet in height, and the number of such spaces to be provided for each commercial or industrial use shall be as follows:

Square Feet of Total Floor Area	Number of Spaces
5,000 to 10,000	1
10,000 to 25,000	2
25,000 to 40,000	3
40,000 to 60,000	4
For each additional 50,000	1 additional space or fraction thereof

- (2) Access to truck standing, loading and unloading areas may be provided directly from a public street or alley or from any right-of-way that will not interfere with public convenience and will permit orderly and safe movement of truck vehicles.
- (3) Unless otherwise permitted, fire zones shall not be used as standing, loading or unloading areas.
- (4) Loading areas, as required under this section, shall be provided in addition to off-street parking spaces and shall not be considered as supplying off-street parking spaces.
- (5) Off-street loading and unloading areas shall conform, as applicable, to all design and locational standards set forth for off-street parking.

D. Access.

240. Editor's Note: Former Subsection B(5)(j), regarding parking for uses in the HBD Zone, which immediately followed, was repealed 2-22-2024 by Ord. No. 03-2024.

- (1) No driveway shall be less than 12 feet in width, and no two-way driveway shall be less than 24 feet in width.
- (2) All driveways into commercial properties or into parking lots in any commercial zone shall, if more than 25 feet in paved width, be divided by a physical barrier.
- (3) No driveway shall exceed 30 feet in width.
- (4) Insofar as possible, driveway and interior accessways for service or industrial trucking shall be separated from accessways to public, customer, or employee parking areas.
- (5) No commercial, industrial or public parking lot driveway shall be located within 50 feet of any intersection.

E. Water supply system and quality.

- (1) Water supply system.
 - (a) All installations shall be properly connected with the Borough water system prior to the issuance of a certificate of occupancy.
 - (b) The water supply system shall be adequate to handle the necessary flow based on complete development.
 - (c) Fire protection facilities shall be furnished for all developments.
 - (d) Minimum fire flows shall be based on recommendations by the American Insurance Association and the National Board of Fire Underwriters, as indicated in Exhibits 9-4 and 9-5.
 - (e) The water system shall be designed to carry peak-hour flows and be capable of delivering the peak hourly demands indicated in Exhibit 9-5.
 - (f) For developments of one and two-family dwellings, not exceeding two stories in height, the short method indicated in Exhibit 9-6 may be used.

**Exhibit 9-4
Fire Flows**

Population	Flow GPM*	Duration of Flow (hours)
Under 100	500	4
1,000	1,000	4
1,500	1,250	5
2,000	1,500	6
3,000	1,750	7
4,000	2,000	8
5,000	2,250	9
6,000	2,500	10

**Exhibit 9-4
Fire Flows**

Population	Flow GPM*	Duration of Flow (hours)
10,000	3,000	10

NOTE:

* GPM = gallons per minute.

**Exhibit 9-5
Design Standards for Peak-Hour Flow**

Total Houses Served	Peak Hourly Rates (GPM per house)
5	8.0
10	5.0
50	3.0
100	2.0
250	1.3
500	0.8
750	0.7
1,000 or more	0.6

**Exhibit 9-6
Short Method for Calculating Fire Flows**

Distance Between Buildings* (feet)	Required Fire Flow (gallons per minute)
Over 100	500
31 to 100	750 to 1,000
11 to 30	1,000 to 1,500
10 or less	1,500 to 2,000

NOTE:

* For contiguous buildings (attached dwelling units of two or more, two-family units and/or multifamily units), a minimum of 2,500 GPM may be used.

- (2) System design and placement. System design and placement shall comply with the construction specifications²⁴¹ and with the requirements of the Atlantic Highlands Water Department.

(3) Fire hydrants.

- (a) Hydrants shall be spaced to provide necessary fire flow, and the average area per hydrant typically should not exceed 120,000 square feet. In addition, hydrants shall be spaced so that each residence shall be within 500 feet of a hydrant.
- (b) A hydrant shall be located at all low points and at all high points with adequate means of drainage provided.
- (c) Hydrants shall be located at the ends of lines, and valves of full-line size shall be provided after hydrant tees at the ends of all dead lines and lines which maybe extended in the future.
- (d) Size, type, and installation of hydrants shall conform to the specifications as set forth in the construction specifications or to the requirements of the Atlantic Highlands Water Department.

(4) Water quality.

- (a) All subdivision and/or site plan applications must provide for the protection of potable water supply reservoirs from pollution or other degradation of water quality resulting from the development or other uses of surrounding land areas. All provisions related to water quality shall be in accordance with any siting, performance, or other standard or guidelines adopted therefor by the Department of Environmental Protection.

F. Sanitary sewers.

(1) Sanitary sewer system.

- (a) All installations shall be properly connected with an approved and functioning sanitary sewer system prior to the issuance of a certificate of occupancy.
- (b) Subdivisions shall be connected to an existing sanitary sewer system if public service is available within the following distances: 200 feet for one-unit, 400 feet for two-unit, 600 feet for three-unit, 800 feet for four-unit, and 1,000 feet for five-unit to fifteen-unit developments. For developments of greater than 15 units which are within one mile from an existing public sanitary sewer system, adequate justification should be provided as to why they should not provide a connection to the existing sanitary sewer system. For developments of greater than 15 units which are more than one mile from an existing system, the sanitary sewer strategy shall be determined on a case-by-case basis, taking into consideration the density of development, and economic considerations.
- (c) If a public system is not in place or cannot be extended, the developer may provide individual subsurface disposal systems subject to applicable Board of Health and NJDEP regulations.
- (d) If a public sanitary sewer system will be provided to the area as indicated in the municipal sewer master plan, Official Map, or other official document, a municipality may require installation of a capped system (mains, only) within the road right-of-way; or alternatively a municipality may require a payment in lieu of the improvement. Capped sanitary sewers shall be allowed only in areas indicated for sewer service in the State of New Jersey

Statewide Water Quality Management (WQM) Plans and where permitted by the NJDEP through sewer connection approval.

(2) System planning, design and placement.

- (a) The planning, design, construction, installation, modification, and operation of any treatment works shall be in accordance with the applicable NJDEP regulations implementing the New Jersey Water Pollution Control Act (N.J.S.A. 58:10a-1 et seq.) and the New Jersey Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.).
- (b) All sanitary sewers, including outfalls, shall be designed to carry at least twice the estimated average design flow when flowing half full. In the case of large interceptor sewer systems, consideration may be given to modified designs.
- (c) Average daily residential sewer flow shall be calculated as shown in Exhibit 9-7.
- (d) System design and placement shall comply with the specifications set forth in the construction specifications²⁴² and with the rules, regulations and requirements of the Borough or, where applicable, the Atlantic Highlands/Highlands Sewer Authority.

Exhibit 9-7
Average Daily Residential Sewer Flow

Type of Establishment	Measurement Unit	Gallons Per Day
Single-family dwelling	Unit	300
Apartment/ condominium/ townhouse	1 bedroom	150
	2 bedroom	225
	3 bedroom	300
Transit Dwelling Units		
Hotels	Bedroom	75
Lodging houses	Bedroom	60
Motels	Bedroom	60
Boardinghouses	Boarder	50
Camps		
Taller camps (private bath)	Person	75
Trainer camp (central bath)	Person	50
Luxury camps (private bath)	Person	75

242.Editor's Note: See § 150-90, Construction specifications.

Exhibit 9-7
Average Daily Residential Sewer Flow

Type of Establishment	Measurement Unit	Gallons Per Day
Childrens' camps (central bath)	Person	50
Labor camps	Person	40
Day camps - no meals	Person	15
Restaurants		
Average type	Patron	15
Bar and cocktail lounges	Patron	5
Short-order or drive-in service	Patron	5
Clubhouses		
Residential type	Person	75
Nonresidential (serving meals)	Person	35
Institutions		
Hospitals	Person	200
Other	Person	125
Schools		
Elementary (no shower or cafeteria)	Person	10
With cafeteria	Person	15
With cafeteria and showers	Person	20
With cafeteria, showers and laboratories	Person	25
Boarding	Person	75
Automobile Service Stations		
No car washing	Car served	5
Car washing	Car washed	75
Miscellaneous		
Retail and office buildings	Square feet	0.125
Factories (8-hour shift)	Person	25
Warehouse	Person	25

Exhibit 9-7
Average Daily Residential Sewer Flow

Type of Establishment	Measurement Unit	Gallons Per Day
Self-service laundries	Wash	50
Bowling alleys	Alley	200
Swimming pool and beaches	Person	15
Picnic parks (with flush toilets)	Person	10
Fairgrounds (based upon average attendance)	Person	5
Assembly halls	Seat	5
Airports (based on passenger use)	Passenger	3
Churches	Seat	5
Theater (indoor)	Seat/car	5

G. Stormwater management.

(1) Purpose.

- (a) It is hereby determined that the waterways within the Borough Atlantic Highlands are at times subjected to flooding; that such flooding is a danger to the lives and property of the public; that such flooding is also a danger to the natural resources of the Borough of Atlantic Highlands, the county and the state; that development tends to accentuate flooding by increasing stormwater runoff, due to alteration of the hydrologic response of the watershed in changing from the undeveloped to the developed condition; that such increased flooding produced by the development of real property contributes increased quantities of waterborne pollutants, and tends to increase channel erosion; that such increased flooding, increased erosion, and increased pollution constitutes deterioration of the water resources of the Borough of Atlantic Highlands, the county and the state; and that such increased flooding, increased erosion and increased pollution can be controlled to some extent by the regulation of stormwater runoff from such development. It is therefore determined that it is in the public interest to regulate the development of real property and to establish standards to regulate the additional discharge of stormwater runoff from such developments as provided in these regulations.
- (b) The stormwater management plans submitted shall demonstrate careful consideration of the general and specific concerns, values and standards of the municipal Master Plan and applicable county, regional and state storm drainage control program, any county mosquito commission control standards, and shall be based on environmentally sound site planning, engineering and architectural techniques.
- (c) Development shall use the best available technology to minimize off-site stormwater runoff, increase on-site infiltration, simulate natural drainage systems, and minimize off-site discharge of pollutants to ground and surface water and encourage natural filtration

functions. Best available technology may include measures such as retention basins, recharge trenches, porous paving and piping, contour terraces and swales.

(2) System strategy and design.

- (a) Stormwater management system strategy and design shall comply with the specifications set forth in the construction specifications.²⁴³
- (b) For all major subdivisions and all major site plans outside the tidal influence of Sandy Hook Bay resulting in more than 10,000 square feet of impervious surface, the total stormwater runoff from the site after development will be limited to not more than 120% of the rate of runoff prior to development. The Planning Board may require the use of reasonable methods of detention and/or recharge on site if it determines that natural provisions and/or downstream conditions are insufficient to handle additional runoff. The Planning Board may waive the provisions of this section if it determines that the nature of the development, the character of adjacent developed areas, or other factors make the utilization of natural drainage features or runoff limiting devices inadvisable or impractical.

(3) Detention — when required.

- (a) Detention will be provided for all major subdivisions and all major site plans resulting in more than 10,000 square feet of impervious surface such that after development the peak rate of flow from the site will not exceed the corresponding flow which would have been created by similar storms prior to development.

§ 150-90. Construction specifications.

Where there is a question as to a specific requirement, the Standard Specifications of NJDOT Road and Bridge Construction shall apply.

A. Curbs.

- (1) The standard curb section used shall be 20 feet in length. All concrete used for curbs shall be prepared in accordance with the requirements by class concrete of the New Jersey Department of Transportation, Standard Specifications for Road and Bridge Construction (latest edition). The twenty-eight-day compressive strength of the concrete used shall be not less than the following:

Type of Concrete	Average Strength (pounds per square inch)
Class P	6,500
Class A	5,500
Class B, B-1	5,000
Class C, C-1	4,500

- (2) Curbs and/or combination curbs and gutters shall be constructed of Class B concrete, air-entrained (5,000 psi).

243.Editor's Note: See § 150-90, Construction specifications.

- (3) Where drainage inlets are constructed, but curbs are not required, curbing must be provided at least 10 feet on each side of the inlet, set back one foot from the extension of the pavement edge.
- (4) Open joints shall be provided every 10 feet. One-half-inch bituminous expansion joints shall be provided every 20 feet.

B. Sidewalks and bikeways.

- (1) Sidewalks and graded areas.
 - (a) Sidewalks shall be four inches thick except at points of vehicular crossing where they shall be at least six inches thick. At vehicular crossings, sidewalks shall be reinforced with welded wire fabric mesh or an equivalent.
 - (b) Concrete sidewalks shall be Class C concrete, having a twenty-eight-day compressive strength of 4,500 psi. Other paving materials may be permitted depending on the design of the development.
 - (c) Graded areas shall be planted with grass or treated with other suitable ground cover and their width shall correspond to that of sidewalks.
- (2) Bikeways.
 - (a) Bicycle paths. Dimensions and construction specifications of bicycle paths shall be determined by the number and type of users and the location and purpose of the bicycle path. A minimum eight-foot paved width should be provided for two-way bicycle traffic and a five-foot width for one-way traffic.
 - [1] Choice of surface materials, including bituminous mixes, concrete, gravel, soil cement, stabilized earth and wood planking, shall depend on use and users of the path.
 - [2] Gradients of bike paths should generally not exceed a grade of 5%, except for short distances.
 - (b) Bicycle lanes. Lanes shall be four feet wide, or wide enough to allow safe passage of bicycles and motorists.
 - (c) Bicycle-safe drainage grates shall be used in the construction of all residential streets.

C. Street grade, intersections, pavement, and lighting.

- (1) Street grade.
 - (a) Minimum street grade permitted for all streets shall be 0.5%; but streets constructed at this grade shall be closely monitored and strict attention paid to construction techniques to avoid ponding. Where topographical conditions permit, a minimum grade of 0.75% shall be used.
 - (b) Maximum street grade shall be 8%.
- (2) Intersections.
 - (a) Minimum intersection angle. Street intersections shall be as nearly at right angles as possible and in no case shall be less than 75°.

- (b) Minimum center-line offset of adjacent intersections. New intersections along one side of an existing street shall, if possible, coincide with any existing intersections on the opposite side of each street. Use of "T" intersections in subdivisions shall be encouraged. To avoid corner-cutting when inadequate offsets exist between adjacent intersections, offsets shall be at least between 175 feet to 200 feet between center lines.
- (c) Minimum curb radius. Intersections shall be rounded at the curbline, with the street having the highest radius requirement as shown in Exhibit 9-8, determining the minimum standard for all curb lines.

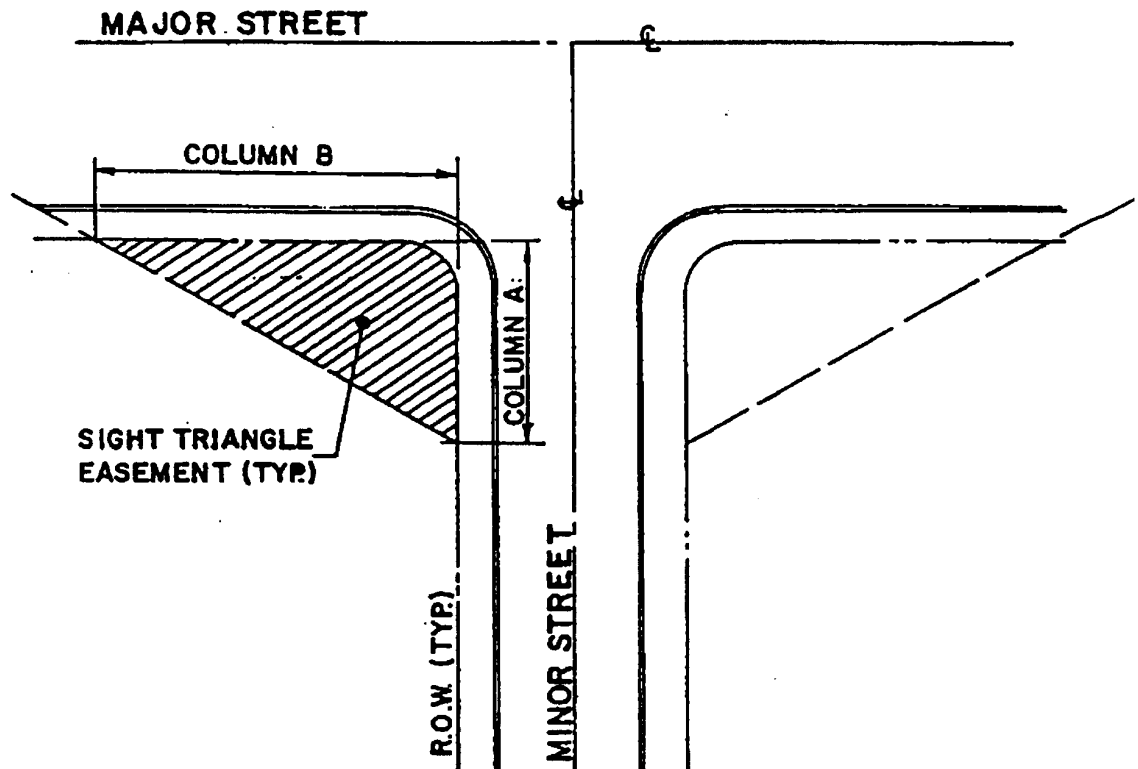
Exhibit 9-8
Intersection Standards

Intersection Standards	Local Street	Collector Street
Maximum grade within 50 feet of intersection	5%	3%
Minimum center-line radius	150 feet	300 feet
Minimum tangent length between reverse curves	100 feet	150 feet
Curb radii	25 feet	35 feet

- (d) Grade. Intersections shall be designed with a flat grade wherever practical. Maximum grade within intersections shall be 5%, except for collectors which shall be 3%.
- (e) Minimum center-line radius; minimum tangent length between reverse curves; and curb radii. Requirements shall be as shown in Exhibit 9-8.
- (f) Sight triangles. Sight triangle easements shall be required and shall include the area on each street corner that is bounded by the line which connects the sight or "connecting" points located on each of the right-of-way lines of the intersecting street. The planting of trees or other plantings or the location of structures exceeding 30 inches in height that would obstruct the clear sight across the area of the easements shall be prohibited; and a public right-of-entry shall be reserved for the purpose of removing any object, material or otherwise, that obstructs the clear sight. The distances shown in Exhibit 9-9 between the connecting points and the intersection of the right-of-way lines shall be required.

**Exhibit 9-9
Sight Triangles**

SIGHT TRIANGLES



TYPICAL DISTANCE REQUIREMENTS ALONG R.O.W. LINE:

<u>COLUMN A</u>		<u>COLUMN B</u>	
MINOR STREET		MAJOR STREET	
RESIDENTIAL ACCESS	50	50	
RESIDENTIAL SUBCOLLECTOR	100	100	
RESIDENTIAL COLLECTOR	150	150	
ARTERIAL	200	200	

(3) Pavement.

- (a) Pavement design for local and collector streets and parking areas shall adhere to the following specifications for their full paved area as shown on Exhibit 9-10.

Exhibit 9-10
Pavement Specifications

Local Streets

Bituminous concrete surface course, Mix I-5	1 1/2" thick
Bituminous stabilized base course, Mix I-2	3 1/2" thick
Prime coat on gravel base	
Gravel base course, soil aggregate, gradation designation I-5	6" thick ^{1,2,3}
If required add: ⁴ subbase, soil aggregate, gradation designation I-2 or I-3	6" thick

Collector Streets

Bituminous concrete surface course, Mix I-5	1 1/2" thick
Bituminous stabilized base course, Mix I-2 (laid in two courses)	4 1/2" thick
Prime coat on gravel base	
Gravel base course, soil aggregate, gradation designation I-5	8" thick ^{1,2,3}
If required add: ⁴ subbase, soil aggregate, gradation designation I-2 or I-3	8" thick

Parking Areas and Aisles⁵

Bituminous concrete surface course, Mix I-5	1 1/2" thick
Bituminous stabilized base course, Mix I-2	2" thick
Gravel base course, soil aggregate, gradation designation I-5	4 1/2" thick ^{1,2}

NOTES:

- ¹ Bituminous stabilized base course may be substituted for gravel base course on a one-inch-to-three-inch ratio.
- ² If subgrade is approved as adequate by the Engineer, gravel base course may be completely eliminated and bituminous stabilized base course may be substituted on one-inch-to-three-inch ratio.
- ³ Gravel base course may be reduced to three inches minimum if subbase is provided.

NOTES:

- ⁴ Subbase may be required depending on subgrade soils, groundwater elevations and other variables.
- ⁵ Portions of parking areas and aisles likely to be subjected to significant heavy truck traffic shall meet the standards for local streets.
- (4) Lighting. Lighting shall be designed in accordance with a plan designed by the utility company; or the standards recommended in the IES Lighting Handbook, shown in Exhibit 9-11, shall be used as a guideline.

Exhibit 9-11
Illumination Guidelines

A. Street illumination.

Street Hierarchy	Area Classification					
	Commercial		Intermediate		Residential	
	Lux	Footcandles	Lux	Footcandles	Lux	Footcandles
Collector	13	1.2	10	0.9	6	0.6
Local	6	0.6	4	0.4	4	0.4

B. Parking illumination (open parking facilities).

Level of Activity	Illumination Objective					
	Vehicular Traffic		Pedestrian Safety		Pedestrian Security	
	Lux	Footcandles	Lux	Footcandles	Lux	Footcandles
Low activity	5	0.5	2	0.2	9	0.8
Medium activity	11	1	6	0.6	22	2
High activity	22	2	10	0.9	43	4

C. Pedestrianway illumination.

Walkways and Bikeway Classification	Minimum Average Level		Average Levels for Special Pedestrian Security				
	Lux	Footcandles	Mounting Heights 3 to 5 meters (9 to 15 feet)		Mounting Heights 5 to 10 meters (15 to 30 feet)		
			Lux	Footcandles	Lux	Footcandles	
Sidewalks (roadside) and Type A bikeways							
Commercial areas	10	0.9	22	2.0	43	4.0	
Intermediate areas	6	0.6	11	1.0	22	2.0	
Residential areas	2	0.2	4	0.4	9	0.8	
Walkways distant from roadways and Type B bikeways							
Park walkways and bikeways	5	0.5	6	0.6	11	1.0	
Pedestrian tunnels	43	4.0	54	5.0	—	—	
Pedestrian overpasses	3	0.3	4	0.4	—	—	
Pedestrian stairways	6	0.6	9	0.8	—	—	

IES Lighting Handbook definitions:

1. Area classification:

1. Commercial. That portion of a municipality in a business development where ordinarily there are large numbers of pedestrians during business hours.
2. Intermediate. That portion of a municipality often characterized by a moderately heavy nighttime pedestrian activity such as in blocks having libraries, community recreation centers, large apartment buildings or neighborhood retail stores.
3. Residential. A residential development, or a mixture of residential and commercial establishments, characterized by a few pedestrians at night. This definition includes areas with single-family homes, townhouses and/or small apartment buildings.

2. Activity level:

High activity. Major-league athletic events, cultural or civic events, and major regional shopping centers.

Medium activity. Fast-food facilities, area shopping centers, hospital parking areas, transportation parking (airports, etc.), cultural, civic or recreational events, and residential complex parking.

Low activity. Local merchant parking, industrial employee parking, educational facility parking.

3. Bikeway classification:

1. Type A bikeway — a strip within or adjacent to a public roadway or shoulder, used for bicycle travel.
2. Type B bikeway — an improved strip identified for public bicycle travel and located away from a roadway or its adjacent sidewalk system.

D. Water supply: system design and placement.

- (1) System design and placement shall comply with all applicable Borough of Atlantic Highlands, NJDEP, and AWWA standards with the strictest standards governing.
- (2) Fire hydrants.
 - (a) Size, type, and installation of hydrants shall be in accordance with local practice, or shall conform to the American Water Works Association standard for dry barrel fire hydrants (AWWA C-502). Hydrants shall have at least three outlets; one outlet shall be a pumper outlet and other outlets shall be at least two-and-one-half-inch nominal size. Street main connections should be not less than six inches in diameter. Hose threads on outlets shall conform to National Standard dimensions. A valve shall be provided on connections between hydrants and street mains. All pipe, fittings, and appurtenances supplying fire hydrants shall be AWWA- or ASTM-approved.
 - (b) All fire hydrants shall conform to the color-code system as shown in Exhibit 9-12.

Exhibit 9-12
Color Code System for Fire Hydrants

Class A	1,000 gpm or greater and water mains of 10 inches and greater: green caps and bonnets
Class B	500 gpm or greater but less than 1,000 gpm and water mains of at least eight inches but less than 10 inches: orange caps and bonnets
Class C	500 gpm or less and water mains of at least six inches but less than eight inches: red caps and bonnets
Barrels	All fire hydrants shall be chrome yellow or equivalent, and all yellow paint shall be of "traffic yellow."

E. Sanitary sewers: system design and placement.

- (1) Plans for sanitary systems shall reflect New Jersey state regulations and guidelines which implement the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and the New Jersey Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.).

- (2) The most desirable location for sanitary sewer mains shall be within the municipal right-of-way at or near the center line of the paved cartway. The minimum size shall be eight inches diameter.
- (3) Curved sewers shall be approved by the Engineer only under special conditions. The minimum diameter shall be eight inches; the minimum radius of curvature shall be 100 feet; and manhole spacing shall not exceed 300 feet. Approval shall be limited to areas where curved streets comprise the general layout, or where the use of curved sewers would permit substantial savings in cost, or avoid very deep cuts, rock or obstructions of a serious nature.
- (4) Easements, which shall be in a form approved by the Municipal Engineer and Attorney, shall be required for all sanitary sewer lines which are not within a public right-of-way. Easements shall be a minimum of 20 feet wide for sanitary sewers up to 15 feet deep; for sewers more than 15 feet deep, easements shall be 30 feet wide. (Depth of sewer shall be measured from the design invert of the pipe to the surface of the proposed final grading.)
- (5) Minimum slope.
 - (a) All sewers shall be designed to meet NJDEP slope standards as shown in Exhibit 9-13.

Exhibit 9-13
Minimum Slopes for Sewer Size by Pipe Diameter

Pipe Diameter (inches)	Fall (in feet per 100 feet of sewer)
8	0.40
10	0.29
12	0.22
14	0.17
15	0.16
16	0.14
18	0.12
20	0.10
21	0.095
24	0.080
27	0.067
30	0.058
36	0.046

- | | |
|----|-------|
| 8 | 0.40 |
| 10 | 0.29 |
| 12 | 0.22 |
| 14 | 0.17 |
| 15 | 0.16 |
| 16 | 0.14 |
| 18 | 0.12 |
| 20 | 0.10 |
| 21 | 0.095 |
| 24 | 0.080 |
| 27 | 0.067 |
| 30 | 0.058 |
| 36 | 0.046 |
- (b) All sewers shall be designed to flow with a minimum velocity of two feet per second and a maximum velocity of 10 feet per second at full flow based on Manning's formula with $n = 0.013$. When PVC pipe is used, an n factor of 0.010 may be used. Inverted siphons shall be designed for minimum velocity of six feet per second.
 - (6) Pipe materials.
 - (a) The applicant shall submit details of the planned pipes, joints, fittings, etc., for approval.

All materials used for sanitary sewer systems shall be manufactured in the United States, wherever available, as governed by Chapter 107, Laws 1982, of the State of New Jersey, effective date: October 3, 1982. Specifications referred to below, such as ASA, ASTM, AWWA, etc., shall be the latest revision.

- (b) Materials used in the construction of sewers, force mains, and outfalls shall be as follows. Gravity sewers shall be constructed of reinforced concrete, ductile iron, polyvinyl chloride (PVC), or acrylonitrile-butadiene-styrene (ABS) plastic pipe. Reinforced concrete pipe shall be used only in sizes 24 inches and larger. The type of pipe selected shall be suitable for any manual design or installation conditions. Other pipe types may be required if compatibility with the existing system is an important consideration. The applicant shall obtain the Engineer's approval of the type of pipe to be used.
- (c) Inverted siphons, force mains, and outfalls shall be constructed of ductile iron pipe unless otherwise permitted by the municipality. Inverted siphons shall consist of two pipes with provisions for flushing. Flow control gates shall be provided in the chambers.
- (d) Any sewer within 100 feet of a water supply well or a below-grade reservoir shall be of steel, reinforced concrete, cast iron, or other suitable material; shall be properly protected by completely watertight construction; and shall be tested for watertightness after installation.
- (e) Reinforced concrete pipe shall meet all the requirements of ASTM Specification C-76. All pipe should be Class IV strength except where stronger pipe is required.
 - [1] For depths less than three feet, measured from the top of the pipe, installed under traffic areas, Marston Class V pipe shall be required.
 - [2] The trench depths shown in Exhibit 9-14 shall be maximum for the pipe classes noted, installed when site conditions allow with Class C, ordinary bedding.

Exhibit 9-14

Maximum Trench Depth

Pipe Class Requirements for Reinforced Concrete Pipe

Pipe Diameter (inches)	Maximum Widths of Trench at Top of Pipe	Depth-Feet (pipe class)	
		IV	V
12 and smaller	3'-0"	6.5	18.0
15	3'-8"	6.0	14.0
18	4'-0"	7.0	16.0
21	4'-3"	8.5	17.5
24	4'-6"	9.0	20.0
30	5'-0"	10.5	22.5
36	5'-8"	11.0	22.0

- [3] The existence of clay soils and other unusual loading conditions should be given special consideration.

- [4] All concrete sewer pipes will utilize rubber O-ring joints suitable for sewer service and conforming to ASTM C-443 and ASTM C-361.
- (f) Polyvinyl chloride sewer pipe (PVC) shall have bell and spigot ends and O-Ring rubber-gasketed joints. PVC pipe and fittings shall conform to ASTM D-3034, with a minimum wall thickness designation of SDR 35. Thicker walls will be provided if directed by the Engineer.
 - [1] The plastic material from which the pipe and fittings are extruded shall be impact types of PVC, unplasticized, having high mechanical strength and maximum chemical resistance conforming to Type I, Grade 1, of the specification for rigid polyvinyl chloride compounds, ASTM D-1784.
 - [2] Pipe shall be free from defects, bubbles, and other imperfections in accordance with accepted commercial practice. The adequacy of the pipe shall be demonstrated, if required, by a test at the manufacturing plant in accordance with ASTM D-2444 for impact and ASTM C 2412 for Deflection and Pipe Stiffness, latest revisions.
 - [3] Joints shall conform to ASTM D-3212. Rubber ring gaskets shall conform to ASTM F-477. The gasket shall be the sole element depended upon to make the joint watertight.
 - [4] The pipe shall be installed as specified in ASTM D-2321, latest revision. In no case shall less than a Class III material be used for bedding and haunching material unless approved in writing by the Engineer. Particular attention shall be given to the special requirements for installing pipe in unstable soil or excessive groundwater. Any additional cost for materials used under these trench conditions shall be borne by the applicant.
 - [5] Plastic riser pipe for cleanouts shall be polyvinyl chloride sewer pipe (PVC) as above specified, or acrylonitrile-butadiene-styrene (ABS). All joints shall have flexible elastomeric seals.
- (g) Ductile iron pipe shall be centrifugally cast in metal or sand-lined molds to AWWA C151. The joint shall be of a type that employs a single elongated grooved gasket to effect the joint seal, such as United States Cast Iron Pipe Company's Tyton Joint, James B. Clow and Sons, Inc., "Bell-Tite," or approved equal. Pipe should be furnished with flanges where connections to flange fittings are required. Pipe shall be Class 52 (minimum). The outside of the pipe shall be coated with a uniform thickness of hot-applied coal-tar coating and the inside lined with cement in accordance with AWWA C104. Ductile iron pipe shall be installed with Class C, ordinary bedding, when site conditions allow.
- (h) Acrylonitrile-butadiene-styrene (ABS) pipe and fittings shall conform to ASTM D-2751 and be installed in accordance with ASTM D-2321 as herein modified. All joints shall be made in accordance with ASTM D-3212 using flexible rubber gaskets conforming to ASTM F-477.
- (7) Pipe bedding.
 - (a) Pipe bedding shall be provided as specified in Design and Construction of Sanitary and Storm Sewers, ASCE Manuals and Reports on Engineering Practice No. 37, prepared by A Joint Committee of the American Society of Civil Engineers and the Water Pollution

Control Federation, New York, 1969.

(8) Manholes.

- (a) Manholes shall be provided at ends of sewer lines, at intersections, and at changes of grade or alignment.
- (b) Spacing intervals between manholes shall not exceed 400 feet for eighteen-inch pipe or less or 500 feet for larger pipe sizes.
- (c) Where sewers enter manholes and the difference in crown elevation between the incoming and outgoing pipes is equal to or greater than two feet, exterior drop pipes shall be provided.
- (d) Manholes can be precast concrete or concrete block coated with two coats of portland cement mortar and a seal coating of an acceptable waterproofing tar, asphalt or polyplastic alloy, with enough time allowed for proper bond between seal coats. All manholes shall be set on twelve-inch-thick Class I stone bedding.
- (e) If precast manhole barrels and cones are used, they shall conform to ASTM Specification C-478, with round rubber-gasketed joints, conforming to ASTM Specification C-923. Maximum absorption shall be 9% in accordance with ASTM Specification C-478, Method A. The entire outside surface of the manhole shall be coated with a bituminous waterproofing material acceptable to the Municipal Engineer. Cracked manholes shall not be used. The top riser section of precast manholes shall terminate less than one foot below the finished grade to provide for proper adjustment.
- (f) Manhole frames and covers shall be of cast iron conforming to Specification ASTM A-48 Class 30 and be suitable for H-20 loading capacity. All manhole covers in unpaved rights-of-way or in remote areas shall be provided with a locking device. In order to allow the municipality to plan better for system management, the name of the municipality, and the word "SEWER" shall be cast integrally in the cover. Manhole frames and grates shall be Campbell Foundry Pattern No. 1203B or approved equal.
- (g) Watertight and low-profile frames and covers shall be utilized where applicable and should conform to the applicable ASTM specifications.
- (h) Manholes shall be supplied with suitable adapters (inserts or gaskets) for the various pipe materials used.

(9) Laterals/cleanouts.

- (a) The house connection or lateral from the street main to the cleanout shall be considered an integral part of the sanitary sewer system. The type of material used for the house connection shall be the material used for the main line sewer construction and may be as follows:

4" cast iron soil pipe, extra heavy
4" PVC plastic pipe, Schedule 40 4"
ABS plastic pipe, SDR 35

- (b) Unless connection is made to an existing sewer main utilizing a saddle, wye connections shall be the same as the material used at the junction of the house connection and the sewer main.
 - (c) Bends in house connection lines shall be made using standard fittings. A riser with a cleanout at grade shall be used at the point terminating municipal jurisdiction. This inspection cleanout or observation tee shall be fitted with a metallic cap (brass) placed two feet from the outside face of the curb between the curb and sidewalk if installed. If curbs are not required, the cleanout shall be placed one foot beyond the property line in the municipal right-of-way.
 - (d) Connections beyond the cleanout are under the jurisdiction of the Borough through the Sanitary Sewer Department, the Construction Official and/or the Plumbing Subcode Official and the pipe size and specifications shall meet their regulations and requirements.
- F. Stormwater management: system demand, strategy, and design.
- (1) Stormwater management: system demand.
 - (a) Watershed stormwater management requires the determination of two runoff parameters: runoff peak rates of discharge and runoff volume. Both parameters shall be used in the comparison of predevelopment and postdevelopment conditions.
 - (b) Peak rate of discharge calculations shall be used to determine the configurations and sizes of pipes, channels, and other routing or flow control structures. Runoff volume calculations shall be used to determine the necessity for, and sizing of, detention and retention facilities.
 - (c) Runoff peak rate of discharge calculation. The peak rate of runoff for areas of up to 1/2 of a square mile shall be calculated by the Rational Method or derivatives. The equation for the Rational Method is:

$$Q_p = CIA$$

Where

Q_p = The peak runoff rate in cubic feet per second (CFS).

C = The runoff coefficient.

I = The average rainfall intensity in inches per hour (inch/hour), occurring at the time of concentration t_c (minutes) t_c = the time of concentration in minutes (minimum).

A = The size of the drainage area.

- [1] Typical C values for storms of five to 10 years between periods are provided in Exhibit 9-15. Runoff coefficients in the following sources may also be used: U.S. Department of Commerce, Bureau of Public Roads, May 1965, Design of Roadside Channels — Hydraulic Design Series No. 4 as supplemented or amended; and Department of Transportation, Federal Aviation Administration, July 1970, AC 150/5320-5B, Airport Drainage, as supplemented or amended.

Exhibit 9-15
Runoff Coefficients
AMC II

Land Use Description		Hydro. Soil Group				
		A	B	C	D	
Cultivated land:						
	Without conservation treatment	0.49	0.67	0.81	0.88	
	With conservation treatment	0.27	0.43	0.67	0.67	
Pasture or range land:						
	Poor condition	0.38	0.63	0.78	0.84	
	Good condition	—	0.25	0.51	0.65	
Meadow: good condition		—	—	0.41	0.61	
Wood or Forest land:						
	Thin stand, poor cover, no mulch	—	0.34	0.59	0.70	
	Good cover	—	—	0.45	0.59	
Open spaces, lawns, parks, golf courses, cemeteries:						
	Good conditions: grass cover on 75% or more of the area	—	0.25	0.51	0.65	
	Fair condition: grass cover on 50% to 75% of the area	—	0.45	0.63	0.74	
Commercial and business areas (85% impervious)		0.84	0.90	0.93	0.96	
Industrial districts (72% impervious)		0.67	0.81	0.88	0.92	
Residential:						
	Average lot size	Average % Impervious				
	1/8 acre or less	65	0.59	0.76	0.86	0.90
	1/4 acre	38	0.29	0.55	0.70	0.80
	1/3 acre	30	—	0.49	0.67	0.78
	1/2 acre	25	—	0.45	0.65	0.76
	1 acre	20	—	0.41	0.63	0.74

Exhibit 9-15
Runoff Coefficients
AMC II

Land Use Description	Hydro. Soil Group			
	A	B	C	D
Paved parking lots, roofs, driveways, etc.	0.99	0.99	0.99	0.99
Streets and roads:				
Paved with curbs and storm sewers	0.99	0.99	0.99	0.99
Gravel	0.57	0.76	0.84	0.88
Dirt	0.49	0.69	0.80	0.84

NOTE: Values are based on SCS definitions and are average values derived by an Advisory Committee for this Manual.

- [2] The time of concentration shall be estimated from Exhibit 9-16. The analysis shall also consider the procedure outlined in Section 3.12(c) for Technical Release (TR) No. 55, Urban Hydrology for Small Watersheds, U.S. Department of Agriculture, Soil Conservation Series, as supplemented and amended (SCS method).

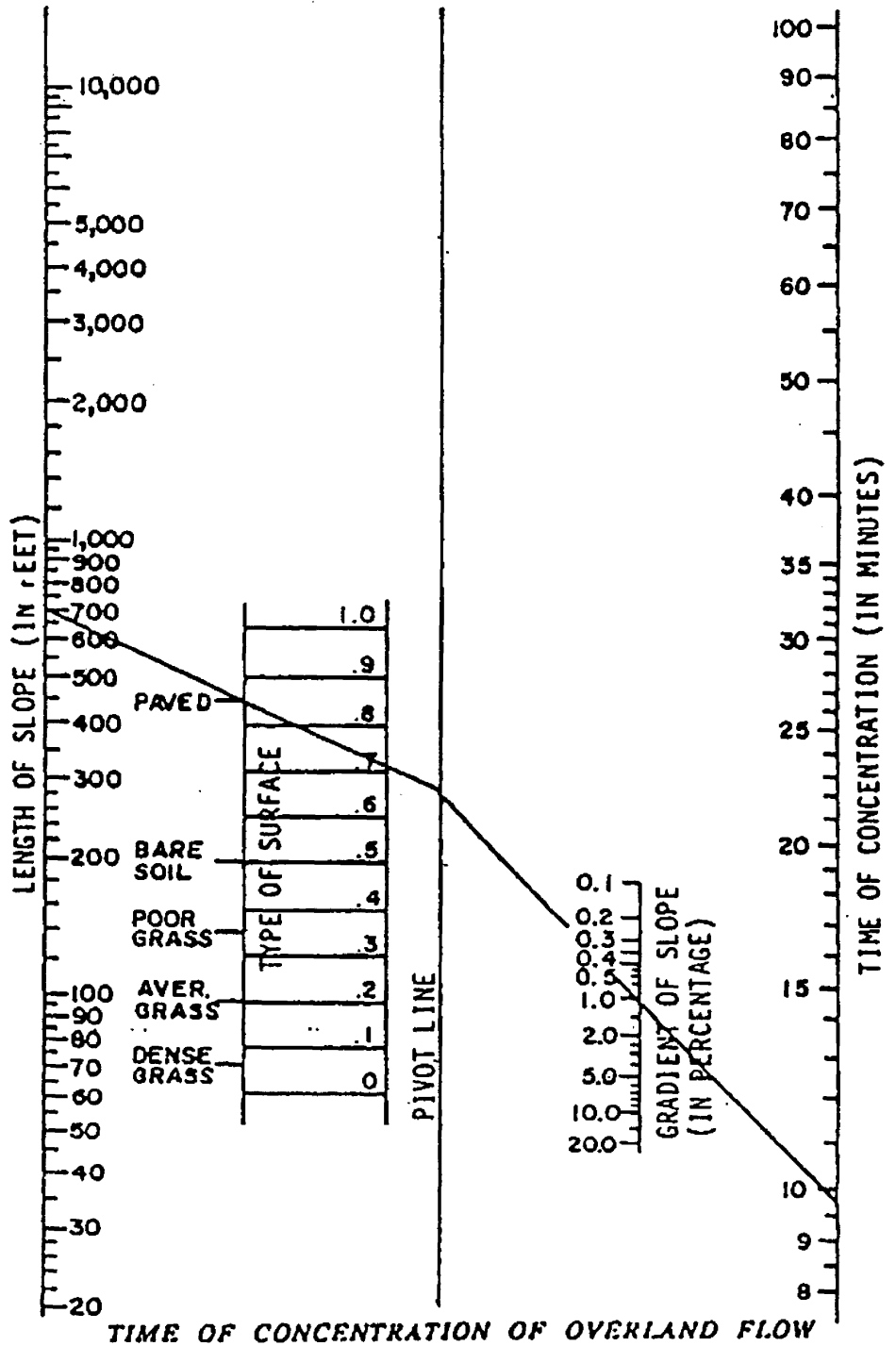
Exhibit 9-16
Nomograph for the Determination of Time of Concentration

NOMOGRAPH FOR THE DETERMINATION OF TIME OF CONCENTRATION

EXAMPLE:

700' OF PAVEMENT ON A

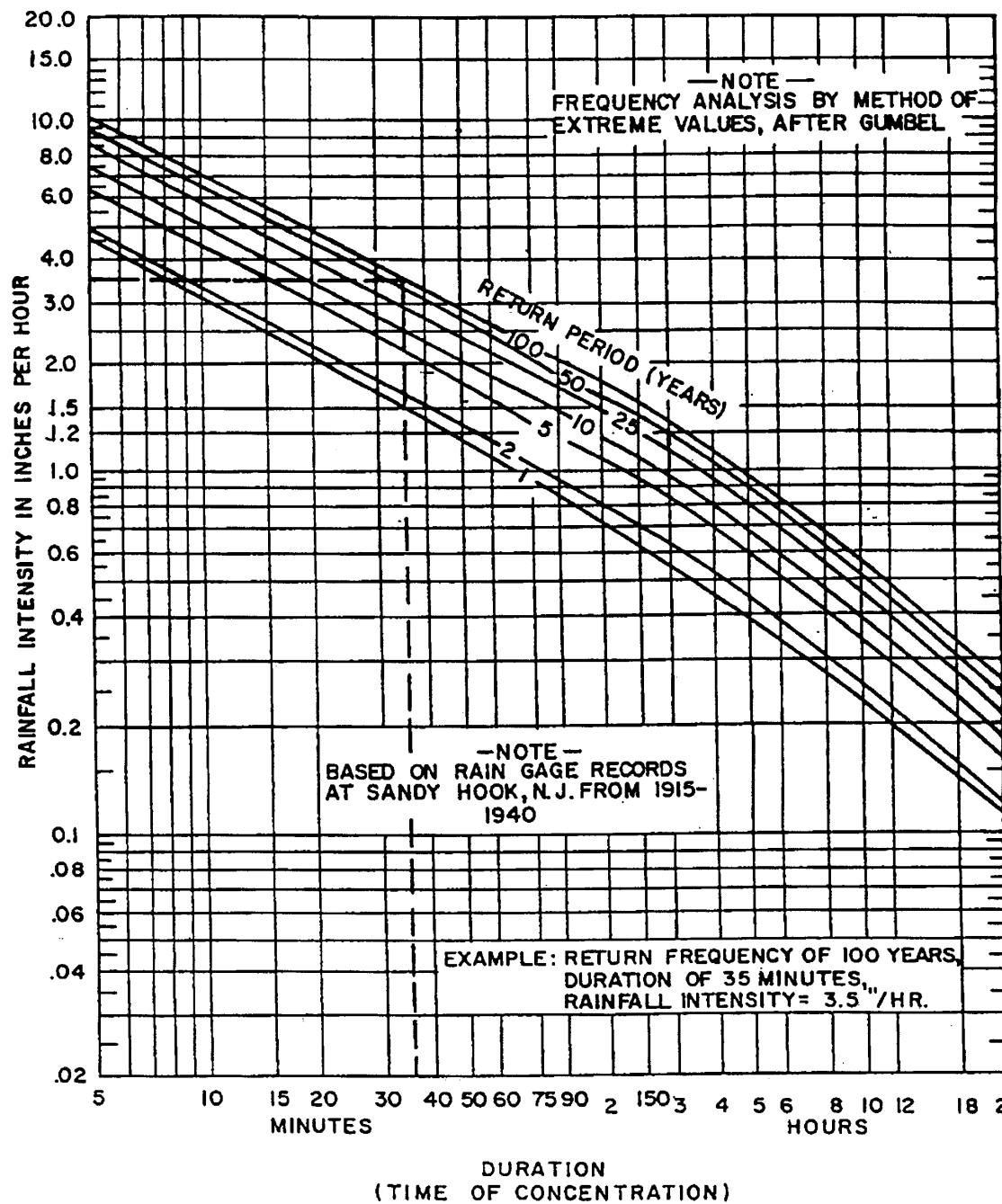
1.0% SLOPE = 9.8 MIN.



Source: State of New Jersey Highway Authority

- [3] Rainfall intensity as a function of duration and storm recurrence frequency shall be based upon geographically appropriate data as depicted in the plates in technical paper No. 25, Rainfall Intensity Duration-Frequency Curves, U.S. Department of Commerce, Weather Bureau, as supplemented and amended. Rainfall intensity values may also be estimated from Exhibit 9-17. Intensity curves may be based on local rainfall frequency data, where available. In all instances, a minimum time of concentration of five minutes should be used. For storm sewer design, use the following:
- [a] Ten-year up to 21 inches.
 - [b] Twenty-five-year over 21 inches.
 - [c] Fifty-year over 48 inches.
 - [d] Fifty-year from low points (SAGS).
 - [e] Fifty-year for culverts.

Exhibit 9-17
Rainfall Intensity Curves (Samples)



- [4] The size of the drainage area shall include on-site and off-site lands contributing to the design point.
- [5] Computer software adaptations of the Rational Method calculations are acceptable provided that their data and graphic printout allow review and evaluation.

- [6] The peak rate of runoff for areas greater than 1/2 square mile shall be calculated by the hydrography analysis method as outlined in TR No. 55 (SCS method), as supplemented and amended.
- (d) Runoff volume calculation.
- [1] Runoff volume shall be calculated by the hydrograph analysis method as outlined in TR No. 55 (SCS method). This method shall be used for watersheds with drainage areas of less than five square miles. For drainage areas of less than 20 acres, the Universal Rational Method hydrography approximation may be used as an alternative.
- [2] Runoff volume for drainage areas of greater than five square miles shall be calculated by Special Report No. 38, Magnitude and Frequency of Floods in New Jersey with Effects of Urbanization, State of New Jersey, Department of Environmental Protection, Division of Water Resources (Stankowski Method).
- [3] Computer software adaptations of these runoff value calculations are acceptable provided that their data and graphic printout allow review and evaluation.
- (2) Stormwater management: system strategy.
- (a) A system emphasizing a natural as opposed to an engineered drainage strategy shall be encouraged.
- (b) The applicability of a natural approach depends on such factors as site storage capacity, open channel hydraulic capacity, and maintenance needs and resources.
- (c) Hydraulic capacity for open-channel or closed-conduit flow shall be determined by the Manning Equation, or charts/nomographs based on the Manning Equation. The hydraulic capacity is termed Q and is expressed as discharge in cubic feet per second. The Manning Equation is as follows:

$$Q = 1.486 \frac{A R^{2/3} S^{1/2}}{n}$$

Where

n = Manning's roughness coefficient.

A = Cross-sectional area of flow in square feet.

R = Hydraulic radius in feet (R = A/P, where P is equal to the wetted perimeter).

S = Slope of conduit in feet per foot.

The Manning roughness coefficients to be utilized are shown in Exhibit 9-18.

- (d) Velocities in open channels at design flow shall not be less than five-tenths foot per second and not greater than that velocity which will begin to cause erosion or scouring of the channel. Permissible velocities for swales, open channels and ditches are shown in Exhibit 9-19.
- (e) Velocities in closed conduits at design flow shall be at least two feet per second but not

more than the velocity which will cause erosion damage to the conduit.

Exhibit 9-18
Manning's Roughness Coefficients
Values of the Roughness Coefficient "n"

Type of Channel		Minimum	Normal	Maximum
A. CLOSED CONDUITS FLOWING PARTLY FULL				
A-1. Metal				
a.	Brass, smooth	0.009	0.010	0.013
b.	Steel			
1.	Lockbar and welded	0.010	0.012	0.014
2.	Riveted and spiral	0.013	0.016	0.017
c.	Cast iron			
1.	Coated	0.010	0.013	0.014
2.	Uncoated	0.011	0.014	0.016
d.	Wrought iron			
1.	Black	0.012	0.014	0.015
2.	Galvanized	0.013	0.016	0.017
e.	Corrugated metal			
1.	Subdrain	0.017	0.019	0.021
2.	Storm drain	0.021	0.024	0.030
A-2. Nonmetal				
a.	Lucite	0.008	0.009	0.010
b.	Glass	0.009	0.010	0.013
c.	Cement			
1.	Neat, surface	0.010	0.011	0.013
2.	Mortar	0.011	0.013	0.015
d.	Concrete			
1.	Culvert, straight and free of debris	0.010	0.011	0.013
2.	Culvert with bends, connections, and some debris	0.011	0.013	0.014
3.	Finished	0.011	0.012	0.014
4.	Sewer with manholes, inlet, etc., straight	0.013	0.015	0.017

Exhibit 9-18
Manning's Roughness Coefficients
Values of the Roughness Coefficient "n"

Type of Channel	Minimum	Normal	Maximum
5. Unfinished, steel form	0.012	0.013	0.014
6. Unfinished, smooth wood form	0.012	0.014	0.016
7. Unfinished, rough wood form	0.015	0.017	0.020
e. Wood			
1. Stave	0.010	0.012	0.014
2. Laminated, treated	0.015	0.017	0.020
f. Clay			
1. Common drainage tile	0.011	0.013	0.017
2. Vitrified sewer	0.011	0.014	0.017
3. Vitrified sewer with manholes, inlet, etc.	0.013	0.015	0.017
4. Vitrified subdrain with open joint	0.014	0.016	0.018
g. Brickwork			
1. Glazed	0.011	0.013	0.015
2. Lined with cement mortar	0.012	0.015	0.017
h. Sanitary sewers coated with sewage slimes, with bends and connections	0.012	0.013	0.016
i. Paved invert, sewer, smooth bottom	0.016	0.019	0.020
j. Rubble masonry, cemented	0.018	0.025	0.030
B. LINED OR BUILT-UP CHANNELS			
B-1. Metal			
a. Smooth steel surface			
1. Unpainted	0.011	0.012	0.014
2. Painted	0.012	0.013	0.017
b. Corrugated	0.021	0.025	0.030
B-2 Nonmetal			
a. Cement			
1. Neat, surface	0.010	0.011	0.013

Exhibit 9-18
Manning's Roughness Coefficients
Values of the Roughness Coefficient "n"

Type of Channel	Minimum	Normal	Maximum
2. Mortar	0.011	0.013	0.015
b. Wood			
1. Planed, untreated	0.010	0.012	0.014
2. Planed, creosoted	0.011	0.012	0.015
3. Unplanned	0.011	0.013	0.015
4. Plank with battens	0.012	0.015	0.018
5. Lined with roofing paper	0.010	0.014	0.017
c. Concrete			
1. Trowel finish	0.011	0.013	0.015
2. Float finish	0.013	0.015	0.016
3. Finished, with gravel on bottom	0.015	0.017	0.020
4. Unfinished	0.014	0.017	0.020
5. Gunite, good section	0.016	0.019	0.023
6. Gunite, wavy section	0.018	0.022	0.025
7. On good excavated rock		0.017	0.020
8. On irregular excavated rock		0.022	0.027
d. Concrete bottom float finished with sides of			
1. Dressed stone in mortar	0.015	0.017	0.020
2. Random stone in mortar	0.017	0.020	0.024
3. Cement rubble masonry, plastered	0.016	0.020	0.024
4. Cement rubble masonry	0.020	0.025	0.030
5. Dry rubble or riprap	0.020	0.030	0.035
e. Gravel bottom with sides of			
1. Formed concrete	0.017	0.020	0.025
2. Random stone in mortar	0.020	0.023	0.026
3. Dry rubble or riprap	0.023	0.033	0.036
f. Brick			
1. Glazed	0.011	0.013	0.015

Exhibit 9-18
Manning's Roughness Coefficients
Values of the Roughness Coefficient "n"

Type of Channel	Minimum	Normal	Maximum
2. In cement mortar	0.012	0.015	0.018
g. Masonry			
1. Cemented rubble	0.017	0.025	0.030
2. Dry rubble	0.023	0.032	0.035
h. Dressed ashlar	0.013	0.015	0.017
i. Asphalt			
1. Smooth	0.013	0.013	
2. Rough	0.016	0.016	
j. Vegetal lining	0.030	—	0.500
C. EXACAVATED OR DREDGED			
a. Earth, straight and uniform			
1. Clean, recently completed	0.016	0.018	0.020
2. Clean, after weathering	0.018	0.022	0.025
3. Gravel, uniform section, clean	0.022	0.025	0.030
4. With short grass, few weeds	0.022	0.027	0.033
b. Earth, winding and sluggish			
1. No vegetation	0.023	0.025	0.030
2. Grass, some weeds	0.025	0.030	0.033
3. Dense weeds or aquatic plants in deep channels	0.030	0.035	0.040
4. Earth bottom and rubble sides	0.028	0.030	0.035
5. Stony bottom and weedy banks	0.025	0.035	0.040
6. Cobble bottom and clean sides	0.030	0.040	0.050
c. Dragline-excavated or dredged			
1. No vegetation	0.025	0.028	0.033
2. Light brush on banks	0.035	0.050	0.060
d. Rock cuts			

Exhibit 9-18
Manning's Roughness Coefficients
Values of the Roughness Coefficient "n"

Type of Channel	Minimum	Normal	Maximum
1. Smooth and uniform	0.025	0.035	0.040
2. Jagged and irregular	0.035	0.040	0.050
e. Channels not maintained, weeds and brush uncut			
1. Dense weeds, high as flow depth	0.050	0.080	0.120
2. Clean bottom, brush on sides	0.040	0.050	0.080
3. Same, highest stage of flow	0.045	0.070	0.110
4. Dense brush, high stage	0.080	0.100	0.140
D. NATURAL STREAMS			
D-1. Minor streams (top width at flood stage 100 ft)			
a. Streams on plain			
1. Clean, straight, full stage, no rift or deep pools	0.025	0.030	0.033
2. Same as above, but more stones and weeds	0.030	0.035	0.040
3. Clean, winding, some pools and shoals	0.033	0.040	0.045
4. Same as above, but some weeds and stones	0.035	0.045	0.050
5. Same as above, lower stages, more ineffective slopes and sections	0.040	0.048	0.055
6. Same as 4, but more stones	0.045	0.050	0.060
7. Sluggish reaches, weedy, deep pools	0.050	0.070	0.080
8. Very weedy reaches, deep pools, or floodways with heavy stand of timber and underbrush	0.075	0.100	0.150

Exhibit 9-18
Manning's Roughness Coefficients
Values of the Roughness Coefficient "n"

Type of Channel	Minimum	Normal	Maximum
b. Mountain streams, no vegetation in channel, banks usually steep, trees and brush along banks submerged at high stages			
1. Bottom: gravels, cobbles, and few boulders	0.030	0.040	0.050
2. Bottom: cobbles with large boulders	0.040	0.050	0.070
D-2. Floodplains			
a. Pasture, no brush			
1. Short grass	0.025	0.030	0.035
2. High grass	0.030	0.035	0.050
b. Cultivated areas			
1. No crop	0.020	0.030	0.040
2. Mature row crops	0.025	0.035	0.045
3. Mature field crops	0.030	0.040	0.050
c. Brush			
1. Scattered brush, heavy weeds	0.035	0.050	0.070
2. Light brush and trees in winter	0.035	0.050	0.060
3. Light brush and trees, in summer	0.040	0.060	0.080
4. Medium to dense brush, in winter	0.045	0.070	0.110
5. Medium to dense brush, in summer	0.070	0.100	0.160
d. Trees			
1. Dense willows, summer, straight	0.110	0.150	0.200
2. Cleared land with tree stumps, no sprouts	0.030	0.040	0.050
3. Same as above, but with heavy growth of sprouts	0.050	0.060	0.080

Exhibit 9-18
Manning's Roughness Coefficients
Values of the Roughness Coefficient "n"

Type of Channel	Minimum	Normal	Maximum
4. Heavy stand of timber, a few down trees, little undergrowth, flood stage below branches	0.080	0.100	0.120
5. Same as above, but with flood stage reaching branches	0.100	0.120	0.160
D-3. Major streams (top width at flood stage 100 ft). The n value is less than that for minor streams of similar description, because banks offer less effective resistance.			
a. Regular section with no boulders or brush	0.025	—	0.060
b. Irregular and rough section	0.035	—	0.100

Exhibit 9-19
Permissible Velocities for Swales, Open Channels, and Ditches with
Uniform Stands of Various Well-Maintained Grass Covers

Cover	Slope Range²(percent)	Permissible Velocity¹	
		Erosion Resistant Soils	Easily Eroded Soils
		(feet per second)	(feet per second)
	0 to 5	8	6
Bermudagrass	5 to 10	7	5
	Over 10	6	4
Bahia			
Buffalograss			
Kentucky bluegrass	0 to 5	7	5
	5 to 10	6	4
Smooth brome	Over 10	5	3
Blue grama			
Tall fescue			
Grass mixtures	0 to 5 ²	5	4
Reed canarygrass	5 to 10	4	3

Exhibit 9-19
Permissible Velocities for Swales, Open Channels, and Ditches with
Uniform Stands of Various Well-Maintained Grass Covers

Cover	Slope Range ² (percent)	Permissible Velocity ¹	
		Erosion Resistant Soils (feet per second)	Easily Eroded Soils (feet per second)
Lespedeza sericea	0 to 5 ³	3.5	2.5
Weeping lovegrass			
Yellow bluestem			
Redtop			
Alfalfa			
Red fescue			
Common lespedeza ⁴	0 to 5 ⁵	3.5	2.5
Sudangrass ⁴			

NOTES:

- ¹ Use velocities exceeding five feet per second only where good covers and proper maintenance can be obtained.
- ² Do not use on slopes steeper than 10% except for vegetated side slopes in combination with a stone, concrete, or highly resistant vegetative center section.
- ³ Do not use on slopes steeper than 5% except for vegetated side slopes in combination with a stone, concrete, or highly resistant vegetative center section.
- ⁴ Annuals—use on mild slopes or as temporary protection until permanent covers are established.
- ⁵ Use on slopes steeper than 5% is not recommended.

- (3) Stormwater management: system design pipe capacity, materials, and placement.
 - (a) Pipe size shall be dictated by design runoff and hydraulic capacity.
 - (b) Hydraulic capacity shall be determined by the Manning Equation, except where appropriate capacity shall be based on tailwater analysis and one-year high tide.
 - (c) In general, no pipe size in the storm drainage system shall be less than fifteen-inch diameter. A twelve-inch diameter pipe will be permitted as a cross-drain to a single inlet.
 - (d) All discharge pipes shall terminate with a precast concrete or corrugated metal end section or a cast-in-place concrete headwall with or without wingwalls as conditions require. In normal circumstances, a cast-in-place concrete headwall is preferred. Use of other types shall be justified by the designer and approved by the Engineer.
 - (e) Materials used in the construction of storm sewers shall be constructed of reinforced

concrete, ductile iron, corrugated aluminum, or corrugated steel. In normal circumstances, reinforced concrete pipe is preferred. Use of other types shall be justified by the designer and approved by the Engineer. Specifications referred to, such as ASA, ASTM, AWWA, etc., should be the latest revision.

[1] Reinforced concrete pipe:

- [a] Circular reinforced concrete pipe and fittings shall meet the requirements of ASTM C-76.
- [b] Elliptical reinforced concrete pipe shall meet the requirements of ASTM C-507.
- [c] Joint design and joint material for circular pipe shall conform to ASTM C-443.
- [d] Joints for elliptical pipe shall be bell and spigot or tongue and groove sealed with butyl, rubber tape, or external sealing bands conforming to ASTM C-877.
- [e] All pipe shall be Class II unless a stronger pipe (i.e., higher class) is indicated to be necessary.
- [f] The minimum depth of cover over the concrete pipe shall be as designated by the American Concrete Pipe Association, as follows:

Pipe Diameter (inches)	ASTM Class Pipe	Minimum Cover (surface to top of pipe) (inches)	Pipe Diameter (inches)	ASTM Class Pipe	Minimum Cover (surface to top of pipe) (inches)
12	III	17	24	III	15
	IV	12		IV	6
	V	7		V	6
15	III	16	30	III	10
	IV	11		IV	6
	V				
18	III	16	36 and above	III	6
	IV	10		IV	6
	V	6			

- [2] Ductile iron pipe shall be centrifugally cast in metal or sand-lined molds to ANSI A21.51-1976 (AWWA C151-76). The joints shall conform to AWWA C 111. Pipe shall be furnished with flanges where connections to flange fittings are required. Pipe should be Class 50 (minimum). The outside of the pipe should be coated with a uniform thickness of hot applied coal tar coating and the inside lined cement in accordance with AWWA C 104. Ductile iron pipe shall be installed with Class C, ordinary bedding.

- [3] Corrugated aluminum pipe. Within the public right-of-way and where severe topographic conditions or the desire to minimize the destruction of trees and vegetation exists, corrugated aluminum pipe, pipe arch or helical corrugated pipe may be used. The material used shall comply with the Standard Specifications for Corrugated Aluminum Alloy Culvert and Under Drains AASHTO Designation M-196 or the Standard Specification for Aluminum Alloy Helical Pipe AASHTO Designation M-211. The minimum thickness of the aluminum pipe to be used shall be: less than twenty-four-inch diameter or equivalent, 0.75 inch (fourteen-gauge); twenty-four-inch diameter and less than forty-eight-inch diameter or equivalent, 0.105 inch (twelve-gauge); forty-eight-inch but less than seventy-two-inch diameter or equivalent, 0.135 inch (ten-gauge); and seventy-two-inch diameter or equivalent and larger, 0.164 inch (eight-gauge).
- [4] Corrugated steel pipe may be used in place of corrugated aluminum and shall meet the requirements of AASHTO Specification M-36. Coupling bands and special sections shall also conform to AASHTO M-36. All corrugated steel pipe shall be bituminous coated in accordance with AASHTO M-190, Type A minimum.
- [5] Pipe bedding shall be provided as specified in Design and Construction of Sanitary and Storm Sewers, ASCE Manuals and Reports on Engineering Practice No. 37, prepared by A Joint Committee of the Society of Civil Engineers and the Water Pollution Control Federation, New York, 1969.
- (f) Maintenance easements shall be provided around stormwater facilities where such facilities are located outside of the public right-of-way. The size of the easement shall be dictated by working needs.
- (4) Stormwater management: system design inlets, catch basins, and manholes.
- (a) Inlets, catch basins and manholes shall be designed in accordance with New Jersey Department of Transportation Standard Plans and Specifications. Frame and grates shall be one of the following: Campbell Foundry Company Patterns or equal, as approved by the Engineer.

Inlet Type	Inlet Size (interior) (inches)	Cambell Foundry No. (or approved equal)
"A"	24 x 42	3405
"B"	48 x 42	2618
"D"	24 x 42	2617
"E"	48 x 42	3425

- (b) Inlet spacing shall be designed to limit gutter flow width to six feet but shall not be more than 400 feet.
- (c) Manhole spacing shall be increased with pipe size.

Pipe Size (inches)	Manhole Spacing (feet)
15 or less	500
18 to 36	600
42 to 60	700
60+	700+

- (d) Manholes shall be precast concrete, brick or concrete block coated with two coats of portland cement mortar.
 - (e) If precast manhole barrels and cones are used, they shall conform to ASTM Specification C-473 with round rubber gaskets joints, conforming to ASTM Specification C-923. Maximum absorption shall be 8% in accordance with ASTM Specification C-478, Method A.
 - (f) If precast manholes are utilized, the top riser section shall terminate less than one foot below the finished grade and the manhole cover shall be flush with the finished grade.
 - (g) Manhole frames and covers shall be of cast iron conforming to ASTM Specification A-48 Class 30 and be suitable for H-20 loading capacity. All manhole covers in rights-of-way or in remote areas shall be provided with a locking device. The letters "Year 2 0" and the words "ATLANTIC HIGHLANDS STORM SEWER" shall be cast integrally in the cover.
- (5) Stormwater management: system design — detention facilities.
- (a) Development shall use the best available technology to accommodate stormwater management by natural drainage strategies as indicated in this article.
 - (b) Nonstructural management practices, such as open space acquisition, stream encroachment and flood hazard controls shall be coordinated with detention requirements. Changes in land use can often reduce the scope and cost of detention provisions required by means of appropriate change in runoff coefficients.
 - (c) Detention and all other stormwater management facilities shall conform to the standards under the New Jersey Stormwater Management Act, N.J.S.A. 40:55D-1 et seq.
 - (d) Where detention facilities are deemed necessary, they shall accommodate site runoff generated from two-, ten-, and one-hundred-year storms considered individually, unless the detention basin is classified as a dam, in which case the facility must also comply with the Dam Safety Standards, N.J.A.C. 7:20. These design storms shall be defined as either a twenty-four-hour storm using the rainfall distribution recommended by the U.S. Soil Conservation Service when using Soil Conservation Service procedures (such as U.S. Soil Conservation Service, Urban Hydrology for Small Watersheds, Technical Release No. 55) or as the estimated maximum rainfall for the estimated time of concentration of runoff at the site when using a design method such as the Rational Method. Runoff greater than that occurring from the one-hundred-year, twenty-four-hour storm will be passed over an emergency spillway. Detention will be provided such that after development the peak rate of flow from the site will not exceed the corresponding flow which would have been created by similar storms prior to development. For purposes of computing runoff, lands in the site shall be assumed, prior to development, to be in good condition (if the lands are

pastures, lawns or parks), with good cover (if the lands are woods), or with conservation treatment (if the land is cultivated), regardless of conditions existing at the time of computation.

- (e) In calculating the site runoff to be accommodated by a detention facility, the method to be used is a tabular hydrography method as presented in TR No. 55 (SCS method) as supplemented and amended.
 - (f) Detention facilities shall be located as far horizontally from surface water and as far vertically from groundwater as is practicable.
 - (g) Detention facilities shall not intercept the postdevelopment groundwater table, where practicable.
 - (h) The following list of general structural criteria shall be used to design stormwater detention basins. Due to the uniqueness of each stormwater detention basin and the variability of soil and other site conditions, these criteria may be modified or appended at the discretion of the Municipal Engineer if reasons for the variance are indicated in writing.
- (6) Detention components: principal outlets (quantity control).
- (a) To minimize the chance of clogging and to facilitate cleaning, outlet pipes shall be at least six inches in diameter. Similarly, riser pipes, if utilized, shall be at least eight inches in diameter. All pipe joints are to be watertight, reinforced concrete pipe. In addition, trash racks and/or antivortex devices shall be required where necessary.
 - (b) Eight-inch thick antiseep collars are to be installed along outlet pipes. Reinforcement steel shall be No. 5 bars at 12 inches both ways with two inches of cover on both faces (minimum).
 - (c) Where necessary, a concrete cradle shall be provided for outlet pipes.
 - (d) All principal outlet structures shall be concrete block or reinforced concrete. All construction joints are to be watertight.
 - (e) Suitable lining shall be placed upstream and downstream of principal outlets as necessary to prevent scour and erosion. Such lining shall conform to the criteria contained in Hydraulic Engineering Circular No. 15 — Design of Stable Channels with Flexible Linings, published by the Federal Highway Administration of the U.S. Department of Transportation, or Standards for Soil Erosion and Sediment Control in New Jersey, published by the New Jersey State Soil Conservation Committee.
- (7) Detention components: principal outlets (quality control).
- (a) Based upon the requirement limiting the size of the outlet to a minimum of six inches in diameter, water quality control shall be maintained by providing an amount of storage equal to the total amount of runoff which will be produced by the one-year frequency SCS Type III twenty-four-hour storm, or a one-and-one-quarter-inch, two-hour rainfall at the bottom of the proposed detention basin along with a minimum three-inch-diameter outlet.
 - (b) The invert(s) of the principal outlet(s) used to control the larger storms for flood control purposes would then be located at the resultant water surface elevation required to produce

this storage volume. Therefore, the principal outlets would only be utilized for storms in excess of one-and-one-quarter-inch, two-hour event which, in turn, would be completely controlled by the lower, three-inch outlet. If the above requirements would result in a pipe smaller than three inches in diameter, the period of retention shall be waived so that three inches will be the minimum pipe size used. It should be remembered that, in all cases, the basin should be considered initially empty (i.e., the storage provided for the quality requirements and the discharge capacity of its outlet should be utilized during the routing of the larger flood control storms).

(8) Detention components: emergency spillways.

- (a) Vegetated emergency spillways shall have side slopes not exceeding three horizontal to one vertical.
- (b) Emergency spillways not excavated from noncompacted soil shall be suitably lined and shall comply with criteria contained in Hydraulic Circular No. 15 or Standards for Soil Erosion and Sediment Control.
- (c) Maximum velocities in emergency spillways shall be checked based on the velocity of the peak flow in the spillway resulting from the routed emergency spillway hydrography. Where maximum velocities exceed those contained in Exhibit 9-19,²⁴⁴ suitable lining shall be provided.

(9) Detention components: dams and embankments.

- (a) The minimum top widths of all dams and embankments are listed below. These values have been adopted from the Standards for Soil Erosion and Sediment Control in New Jersey published by the New Jersey State Soil Conservation Committee.

Minimum Top Widths

Height (feet)	Top Width (feet)
0 to 15	10
15 to 20	12
20 to 35	14

- (b) The design top elevation of all dams and embankments after all settlement has taken place shall be equal to or greater than the maximum water surface elevation in the basin resulting from the routed freeboard hydrography. Therefore, the design height of the dam or embankment, defined as the vertical distance from the top down to the bottom of the deepest cut, shall be increased by the amount needed to insure that the design top elevation will be maintained following all settlement. This increase shall not be less than 5%. Where necessary, the Engineer shall require consolidation tests of the undisturbed foundation soil to more accurately determine the necessary increase.
- (c) Maximum side slopes for all dams and embankments are three horizontal to one vertical.
- (d) All earth fill shall be free from brush, roots, and other organic material subject to

244.Editor's Note: See § 150-890F(2)(e).

decomposition.

- (e) Cutoff trenches are to be excavated along the dam or embankment center line to impervious subsoil or bedrock.
 - (f) Safety ledges shall be constructed on the side slopes of all detention basins having a permanent pool of water. The ledges shall be four feet to six feet in width and located approximately 2 1/2 feet to three feet below and one foot to 1 1/2 feet above the permanent water surface.
 - (g) The fill material in all earth dams and embankments shall be compacted to at least 95% of the maximum density obtained from compaction tests performed by the appropriate method in ASTM D698.
- (10) Detention facilities in flood hazard areas.
- (a) There will be no detention basins in the floodway except for those on-stream.
 - (b) Whenever practicable, developments and their stormwater detention facilities should be beyond the extent of the flood hazard area of a stream. When that is not feasible and detention facilities are proposed to be located partially or wholly within the flood hazard area (as defined by the New Jersey Division of Water Resources), or other areas which are frequently flooded, some storm conditions will make the facility ineffective at providing retention of site runoff. This will happen if the stream is already overflowing its banks and the detention basin, causing the basin to be filled prior to the time it is needed. In such cases, the standards established in these regulations will be modified in order to give only partial credit to detention capabilities located within a flood hazard area. The credit will vary in a ratio intended to reflect the probability that storage in a detention basin will be available at the time a storm occurs at the site.
 - (c) In addition, detention development must be in compliance with all applicable regulations under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.
 - (d) Detention storage.
- [1] Detention storage provided below the elevation of the edge of the flood hazard area will be credited as effective storage at a reduced proportion as indicated in the table below:

Elevation (feet)	Size of Storage Area*		
	0 to 15 Square Miles	15 to 100 Square Miles	100+ Square Miles
Less than 2 below	40%	65%	90%
Between 2 and 4 below	25%	50%	75%
Over 4 below	10%	25%	50%

NOTE:

- * Area contributing floodwaters to the flood hazard area at the site in question.

- [2] This effective detention storage will be required to provide for drainage of the developed land in accordance with the criteria already established in these regulations. However, the gross storage considered for crediting will not exceed that which would be filled by runoff of a one-hundred-year storm from the site.
- (e) As an alternative to the approach outlined in Subsection F(10)(b) above, if the developer can demonstrate that the detention provided would be effective during runoff from the one-hundred-year, twenty-four-hour Type II storm, peaking simultaneously at the site and on the flood hazard area, the developer's plan will be accepted as complying with the provisions of Subsection F(2)(b) above.
 - (f) In making computations under Subsection F(2)(b) or (e) above, the volume of net fill added to the flood hazard area portion of the project's site will be subtracted from the capacity of effective detention storage provided. "Net fill" is defined as the total amount of fill created by the project less the amount of material excavated during the construction of the project, both measured below the excavation of the one-hundred-year flood but above the elevation of low water in the stream.
 - (g) Where detention basins are proposed to be located in areas which are frequently flooded but have not been mapped as flood hazard areas, the provisions of either Subsection F(2)(b) or (e) will be applied substituting the elevation of a computed one-hundred-year flood for the elevation of the flood hazard area in Subsection F(2)(b).
- (11) Detention facilities: maintenance and repair.
- (a) Responsibility for operation and maintenance of detention facilities, including periodic removal and disposal of accumulated particulate material and debris, shall remain with the owner or owners of the property with permanent arrangements that it shall pass to any successive owner, unless assumed by a governmental agency. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance, hereinafter in this section referred to as the "responsible person."
 - (b) Prior to granting approval to any project subject to review under these regulations, the applicant shall enter into an agreement with the municipality (or county) to ensure the continued operation and maintenance of the detention facility. This agreement shall be in a form satisfactory to the Municipal Attorney, and may include, but may not necessarily be limited to, personal guarantees, deed restrictions, covenants, and bonds. In cases where property is subdivided and sold separately, a homeowners' association or similar permanent entity should be established as the responsible entity, absent an agreement by a governmental agency to assume responsibility.
 - (c) In the event that the detention facility becomes a danger to public safety or public health, or if it is in need of maintenance, the municipality shall so notify in writing the responsible person. From that notice, the responsible person shall have 14 days to effect such maintenance and repair of the facility in a manner that is approved by the Municipal

Engineer or his designee. If the responsible person fails or refuses to perform such maintenance and repair, the municipality may immediately proceed to do so and shall bill the cost thereof to the responsible person.

(12) Stormwater management: system design — protecting water quality.

- (a) In addition to addressing water quantity generated by development, a stormwater management system shall also enhance the water quality of stormwater runoff.
- (b) In order to enhance the water quality of stormwater runoff, stormwater management shall provide for the control of a water quality design storm. The water quality design storm shall be defined as the one-year frequency SCS Type III twenty-four-hour storm or a one-and-one-quarter-inch, two-hour rainfall.
- (c) The water quality design storm shall be controlled by best management practices. These include but are not limited to the following:
 - [1] In "dry" detention basins, provisions shall be made to ensure that the runoff from the water quality design storm is retained such that not more than 90% will be evacuated prior to 36 hours for all nonresidential projects or 18 hours for all residential projects. The retention time shall be considered a brim-drawdown time, and therefore shall begin at the time of peak storage. The retention time shall be reduced in any case which would require an outlet size diameter of three inches or less. Therefore, three-inch-diameter orifices shall be the minimum allowed.
 - [2] In permanent ponds or "wet" basins, the water quality requirements of these regulations shall be satisfied where the volume of permanent water is at least three times the volume of runoff produced by the water quality design storm.
 - [3] Infiltration practices, such as dry wells, infiltration basins, infiltration trenches, buffer strips, etc., are encouraged as supplements to a positive outlet system. They may not be used alone unless there is no feasible alternative and, if used, they must produce zero runoff from the water quality design storm and allow for complete infiltration within 72 hours. The normally required storage volume must be doubled.
 - [4] Other suitable best management practices, contained in the New Jersey Stormwater Quantity/Quality Management Manual (State of New Jersey, Department of Environmental Protection, February 1981), shall be consulted.

ARTICLE X
Guarantees and Inspections

§ 150-91. Purpose.

Improvement guarantees shall be provided prior to the recording of final subdivision plats or as a condition of final site plan approval to ensure the municipality of the proper installation and maintenance of on-site and on-tract improvements.

§ 150-92. Performance guarantees.

A. Before filing of final subdivision plats or recording of minor subdivision deeds or as a condition of final site plan approval or as a condition to the issuance of a zoning permit pursuant to N.J.S.A. 40:55D-65, a developer or successor developer shall furnish to the municipality a performance guarantee and/or maintenance guarantee or replacement guarantees in accordance with N.J.S.A. 40:55D-53 for the purpose of assuring the installation and maintenance of certain on-tract improvements as set forth herein: **[Amended 7-25-2018 by Ord. No. 09-2018]**

- (1) The performance guarantee shall be in favor of the municipality in an amount not to exceed 120% of the cost of installation of those improvements required by an approval or a developer's agreement, ordinance, or regulation to be dedicated to a public entity, and that have not yet been installed as shown on the approved plans or plat, including streets, pavement, gutters, curbs, sidewalks, streetlighting, street trees, surveyor's monuments, water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space and any grading necessitated by the preceding improvements. The developer shall also post a performance guarantee, as part of the principal performance guarantee or by separate performance guarantee, for privately owned perimeter buffer landscaping required by municipal ordinance or imposed as a condition of approval.
- (2) The cost shall be determined by the Municipal Engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.4. The Municipal Engineer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee, which shall be appended to each performance guarantee posted by the obligor.
- (3) In the event that the developer seeks a temporary certificate of occupancy for a development, unit, lot building or phase of development, the developer shall furnish a separate temporary certificate of occupancy guarantee in favor of the municipality in an amount equal to 120% of the cost of installation of those improvements or items which remain to be completed or installed and which are required to be installed or completed as a condition precedent to the issuance of a permanent certificate of occupancy and which are not covered by an existing performance guarantee. All sums remaining under an existing performance guarantee which relate to the development, unit, lot building or phase of development for which the temporary certificate of occupancy is sought shall be released. The scope and amount of the temporary certificate of occupancy guarantee shall be determined by the Municipal Engineer. The temporary certificate of occupancy guarantee shall be released by the Municipal Engineer upon the issuance of a permanent certificate of occupancy.
- (4) The developer shall furnish, as a line item of a performance guarantee or as a separate performance guarantee, a safety and stabilization guarantee for the purpose of returning property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition, provided that:

- (a) Site disturbance has commenced and, thereafter, all work has ceased for a period of 60 consecutive days for reasons other than force majeure, and
 - (b) Work has not recommenced within 30 days following written notice by the municipality to the developer of the municipality's intent to claim payment under the guarantee. The written notice shall be delivered by method providing evidence of receipt.
 - (c) The amount of the safety and stabilization guarantee shall be as follows:
 - [1] For a development with bonded improvements not exceeding \$100,000, the amount shall be \$5,000.
 - [2] For a development with bonded improvements exceeding \$100,000, the amount shall be:
 - [a] \$5,000 for the first \$100,000, plus 2.5% of bonded improvement costs in excess of \$100,000, up to \$1,000,000; plus
 - [b] 1% of bonded improvement costs in excess of \$1,000,000.
 - (d) The safety and stabilization guarantee shall be released upon the earlier of the developer's furnishing a performance guarantee which includes a line item for safety and stabilization in the amount required above or the Municipal Engineer's determination that the development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.
- (5) Prior to the release of a performance guarantee required pursuant to Subsection A(1) of this section, the developer shall post with the municipality a maintenance guarantee in the amount not to exceed 15% of the cost of the installation of the improvements which are being released. The term of the maintenance guarantee shall be for a period of two years and shall automatically expire at the end of that term.
- (6) Upon the inspection and issuance of final approval, the developer shall post a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of private site improvements, stormwater management basins, inflow and water quality structures within the basins, and the outflow pipes and structures of the stormwater management system, which cost shall be determined by the Municipal Engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.4. The term of the maintenance guarantee shall be for a period of two years and shall automatically expire at the end of that term.
- B. Performance guarantees shall be submitted in the following form:
- (1) A minimum of 10% of the performance guarantee must be posted in cash.
 - (2) The remaining 90% of the performance guarantee amount may be posted in cash, certified check, irrevocable standby letter of credit or surety bond in the favor of the Borough.
 - (3) If the applicant elects to post an irrevocable standby letter of credit, it shall constitute an unconditional payment obligation of the issuer running solely with the Borough for an express initial period of time in the amount determined pursuant to N.J.S.A. 40:55D-53; be issued by a banking or savings institution authorized to do so and doing business in the State of New Jersey; be for a period of time of at least one year; and permit the Borough to draw upon the letter of credit if the obligor fails to furnish another letter of credit which complies with the provisions

of this section 60 days or more in advance of the expiration date of this letter of credit.

- (4) All guarantees shall provide for construction of the required improvements within two years of the date of their posting or such other time as determined by the Planning Board. This time period may be extended by the governing body, in the form of a resolution granting such extension provided the Planning Board has, if necessary, extended the period of protection pursuant to N.J.S.A. 40:55D-52a. As a condition of this extension, the guarantee amount may be increased or reduced, as the case may be, to an amount not to exceed 120% of the installation, which cost shall be determined by the Borough Engineer as set forth in N.J.S.A. 40:55D-53.4 as of the time of passage of the resolution.
- (5) All performance guarantees shall remain in effect until formally released by the governing body by a resolution.
- (6) All guarantees, sureties, and lending institutions are subject to the approval of the Municipal Attorney and the governing body.

§ 150-93. Inspections.

- A. All site improvements shall be inspected during the time of their installation under the supervision of the Borough Engineer. Prior to the start of construction of any improvements, the applicant shall deposit by cash or certified check with the Municipal Clerk the applicable inspection fee required by Article III.
- B. In no case shall installation of underground facilities or any paving work be conducted without permission from the Borough Engineer.
- C. The Engineer's office shall be notified two working days prior to commencement of each of the following phases of construction so that the Engineer or a qualified representative may be present to inspect the work:
 - (1) Road subgrade.
 - (2) Curb and gutter forms.
 - (3) Curbs and gutters.
 - (4) Road paving.
 - (5) Sidewalk forms.
 - (6) Sidewalks.
 - (7) Drainage pipes and other drainage construction.
 - (8) Street name signs.
 - (9) Monuments.
 - (10) Sanitary sewers.
 - (11) Detention and/or retention basins.
 - (12) Topsoil, seeding, planting, shade trees.

- D. Any improvement installed contrary to the plan or plat approval by the Borough shall constitute just cause to void the municipal approval.
- E. Any improvements installed without notice for inspection shall constitute just cause for:
 - (1) The issuance of a stop-work order by the Municipal Engineer pending the resolution of any dispute.
 - (2) Removal of the uninspected improvements.
 - (3) The payment by the developer of any costs of material testing.
 - (4) The restoration by the developer of any costs for material testing.
- F. Inspection by the Borough of the installation of improvements and utilities shall not operate to subject the Borough to liability for claims, suits or liability of any kind that may at any time arise because of defects or negligence during construction or at any time thereafter; it being recognized that the responsibility to maintain safe conditions at all times during construction and to provide proper utilities and improvements is upon the owners and his contractor, if any.

§ 150-94. Developer's agreement.

Prior to the signing and recording of final major subdivision plats and as a condition of final site plan approval in the case of a site plan, the developer shall enter into an agreement with the governing body if so required by the Planning Board. This agreement shall be of a form that is acceptable to the Municipal Attorney and one in which the developer agrees to abide by the terms and conditions of approval, construct the required improvements in accordance with the approved plans, agree to maintain the constructed improvements including, but not limited to, payment of streetlighting charges pursuant to N.J.S.A 40:55D-53.6, snow removal, maintenance of storm drainage, sewer and water facilities. The developer also shall agree that in the event the improvements are not maintained, the Borough can utilize the cash portions of the performance guarantees to immediately attend to items presenting a safety hazard.

§ 150-95. Release of guarantees.

- A. Request for list of uncompleted or unsatisfactory completed improvements.
 - (1) Upon substantial completion of required street improvements (except for the top course) appurtenant utility improvements, and the connection of same to the public system, the obligor may request of the governing body in writing, by certified mail addressed in care of the Municipal Clerk, that the Borough Engineer prepare, in accordance with the itemized cost estimate prepared by the Borough Engineer and appended to the performance guarantee pursuant to § 150-92A above, a list of all uncompleted or unsatisfactory completed improvements. If such a request is made, the obligor shall send a copy of the request to the Borough Engineer. The request shall indicate which improvements have been completed and which improvements remain uncompleted in the judgment of the obligor. Concurrent with this notice the obligor shall forward a set of as-built plans for the following:
 - (a) Roads (plan and profiles).
 - (b) Surface and stormwater drainage (plans and profiles) for facilities in roads and easements.
 - (c) Sanitary sewers including individual lot connections and cleanouts (plans and profiles) for facilities in roads and easements.

- (d) Water mains, gas mains and underground electric, telephone and community antenna television (C.A.T.V.) conduits (plans and profiles) for facilities in roads and easements.
- (2) Thereupon the Municipal Engineer shall inspect all improvements of which such notice has been given and shall file a detailed report, in writing, with the governing body, and shall simultaneously send a copy thereof to the obligor not later than 45 days after the obligor's request.
- B. The list prepared by the Borough Engineer shall state, in detail, with respect to each improvement determined to be incomplete or unsatisfactory, the nature and the extent of the incompleteness of each incomplete improvement or the nature and extent of, and remedy for, the unsatisfactory state of each completed improvement determined to be complete and satisfactory together with a recommendation to be made in the performance guarantee relating to the completed and satisfactory improvement, in accordance with the itemized cost estimate prepared by the Borough Engineer and appended to the performance guarantee pursuant to § 150-92A above.
- C. The governing body, by resolution, shall either approve the improvements determined to be complete and satisfactory by the Borough Engineer, or reject any or all of these improvements upon the establishment in the resolution of cause for rejection, and shall approve and authorize the amount of reduction to be made in the performance guarantee relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the Borough Engineer and appended to the performance guarantee pursuant to § 150-92A above. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the Borough Engineer. Upon adoption of the resolution by the governing body²⁴⁵
- D. If the Borough Engineer fails to send or provide the list and a report as requested by the obligor pursuant to Subsection A above within 45 days from receipt of the request, the obligor may apply to the court in a summary manner for an order compelling the Borough Engineer to provide the list and report within a stated time and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party. If the governing body fails to approve or reject the improvements determined by the Borough Engineer to be complete and satisfactory or reduce the performance guarantee for the complete and satisfactory improvements within 45 days from the receipt of the Borough Engineer's list and report, the obligor may apply to the court in a summary manner for an order compelling, within a stated time, approval of the complete and satisfactory improvements and approval of a reduction in the performance guarantee for the approvable complete and satisfactory improvements in accordance with the itemized cost estimate prepared by the Borough Engineer and appended to the performance guarantee pursuant to § 150-92A above, and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.
- E. In the event that the obligor has made a cash deposit with the Borough or approving authority as part of the performance guarantee, then any partial reduction granted in the performance guarantee pursuant to this subsection shall be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee.
- F. If any portion of the required improvement is rejected, the obligor is required to complete such improvements and, upon completion, the same procedure of notification, as set forth in this section, shall be followed.
- G. If the required improvements are not completed in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the Borough for the reasonable cost of the

245. Editor's Note: So in original.

improvement not completed or corrected and the Borough may either prior to or after the receipt of the proceeds thereof complete such improvements. Such completion or correction of improvements shall be subject to the public bidding requirements of the Local Public Contracts Law, P.L. 1971. c. 198 (N.J.S.A. 40A:11-1 et seq.).

- H. Any release of performance guarantees will be conditioned upon the provisions of a maintenance guarantee to be posted with the governing body, for a period not to exceed two years after final acceptance of the improvement, in an amount equal to 15% of cost of the improvement, which cost shall be calculated by the Borough Engineer. In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the Borough for such utilities or improvements.
- I. Nothing herein, however, shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the governing body or the Borough Engineer.
- J. In the event that the final approval is by stages or section of development pursuant to N.J.S.A. 40:55D-38, the provisions of this section shall be applied by stage or section.

ARTICLE XI
Off-Tract Improvements

§ 150-96. Purpose.

This article is intended to ensure a pro rata share allocation of the costs for off-tract improvements necessitated by new development.

§ 150-97. Definition and principles.

As a condition of final subdivision or site plan approval, the Planning Board may require an applicant to pay his/her pro rata share of the cost of providing reasonable and necessary circulation improvements, and water, sewerage, and drainage facilities, including land and easements, located off-tract of the property limits of the subdivision or development but necessitated or required by the development. "Necessary" improvements are those clearly, directly, and substantially related to the development in question. The Planning Board shall provide in its resolution of approval the basis of the required improvements. The proportionate or pro rata amount of the cost of such facilities within a related or common area shall be based on the following criteria.

§ 150-98. Cost allocation.

- A. Full allocation. In cases where off-tract improvements are necessitated by the proposed development, and where no other property owner(s) receive(s) a special benefit thereby or where neither the Borough nor any other government entity has planned or programmed or accepted the responsibility for any portion of the cost of the improvements, the applicant may be required at the applicant's sole expense and as a condition of approval, to provide and install such improvements.
- B. Proportionate allocation.
 - (1) Where it is determined that properties outside the development will also be benefited by the off-tract improvements, and where either the Borough or any other government entity has planned or programmed or accepted the responsibility for any portion of the cost of the improvement, the following criteria shall be utilized in determining the proportionate share of the cost of such improvements to the developer.
 - (2) Nothing herein shall be construed to prevent the Planning Board and the developer from agreeing to use a different method to allocate cost.
 - (3) Allocation formula.
 - (a) Sanitary sewers. The applicant's proportionate share of distribution facilities, including the installation, relocation or replacement of collector, trunk and interceptor sewers, and appurtenances associated therewith, shall be computed as follows:
 - [1] The capacity and the design of the sanitary sewer system shall be based on the standards specified in Article IX of these regulations, computed by the developer's engineer and approved by the Municipal Engineer.
 - [2] The Municipal Engineer or Planner shall provide the applicant with the existing and reasonably anticipated peak-hour flows as well as capacity limits of the affected sewer system.
 - [3] If the required system does not exist or the existing system does not have adequate

capacity to accommodate the applicant's flow given existing and reasonably anticipated peak-hour flows, the pro rata share shall be computed to be the larger of:

- [a] The partial cost of a shared improvement where none now exists:

$$\frac{\text{Total cost of improvement}}{\text{Developer's Cost}} = \frac{\text{Capacity of improvement (gallons per day — gpd)}}{\text{Development-generated design flow to be accommodated by the improvement (gpd)}}$$

- [b] The total cost of an improvement designed to accommodate only the development flow, if such an alternative is technically possible.
- [c] The partial cost of a shared improvement where the existing improvement has insufficient capacity:

$$\frac{\text{Total cost of enlargement or improvement}}{\text{Developer's Cost}} = \frac{\text{Capacity of enlargement or improvement in excess of existing capacity (gpd)}}{\text{Development-generated design flow to be accommodated by the enlargement or improvement (gpd)}}$$

- (b) Roadways. The applicant's proportionate share of street improvements, alignment, channelization, barriers, new or improved traffic signalization, signs, curbs, sidewalks, trees, utility improvements uncovered elsewhere, the construction or reconstruction of new or existing streets, and other associated street or traffic improvements shall be as follows:

- [1] The Municipal Engineer or Planner shall provide the applicant with the existing and reasonably anticipated future peak-hour volumes for the off-tract improvements.
- [2] The applicant shall furnish, for approval by the Municipal Engineer, the estimated peak-hour traffic generated by the proposed development and the proportion thereof which is to be accommodated by the proposed off-tract improvement.
- [3] If the required improvements do not exist or if the existing system does not have adequate capacity to accommodate reasonably anticipated volumes, the pro rata share shall be the larger of:

- [a] The partial cost of a shared improvement where none now exists:

$$\frac{\text{Total cost of improvement}}{\text{Developer's Cost}} = \frac{\text{Capacity of improvement (peak hour volume)}}{\text{Development traffic to be accommodated by the enlargement or improvement (peak hour volume)}}$$

- [b] The total cost of an improvement designed to accommodate only the development traffic volume if such an alternative is technically possible.
- [c] The partial cost of a shared improvement where the existing improvement has insufficient capacity:

$$\frac{\text{Total cost of enlargement or improvement}}{\text{Developer's Cost}} = \frac{\text{Capacity of enlargement or improvement in excess of existing capacity (peak hour volume)}}{\text{Development traffic to be accommodated by the enlargement or improvement (peak hour volume)}}$$

- (c) Drainage improvements. The applicant's proportionate share of stormwater and drainage improvements, including the installation, relocation and replacement of storm drains, bridges, culverts, catch basins, manholes, rip-rap, improved drainage ditches and appurtenances thereto, and relocation or replacement of other storm drainage facilities or appurtenances associated therewith, shall be determined as follows:

- [1] The capacity and the design of the drainage to accommodate stormwater runoff shall be based on the standards specified in Article IX of this chapter, computed by the developer's engineer and approved by the Municipal Engineer. The effect of on-site detention, if any, is to be neglected.
- [2] The capacity of the enlarged, extended, or improved system required for the subdivision and areas outside of the developer's tributary to the drainage system shall

be determined by the developer's engineer subject to approval of the Municipal Engineer. The plans for the improved system may be prepared by the developer's engineer or the Municipal Engineer at the developer's expense and the estimated cost of the enlarged system calculated by the Municipal Engineer.

- [3] If the required improvements do not exist or if the existing system does not have adequate capacity to accommodate reasonably anticipated volumes, the pro rata share shall be the larger of:

- [a] The partial cost of a shared improvement where none now exists:

$$\frac{\text{Total cost of improvement}}{\text{Developer's Cost}} = \frac{\text{Capacity of improvement (cfs – peak)}}{\text{Development-generated peak runoff to be accommodated by the enlargement or improvement (cfs)}}$$

- [b] The total cost of an improvement designed to accommodate only the development flow, if such an alternative is technically possible.

- [c] The partial cost of a shared improvement where the existing improvement has insufficient capacity:

$$\frac{\text{Total cost of enlargement or improvement}}{\text{Developer's Cost}} = \frac{\text{Capacity of improvement (cfs peak)}}{\text{Development-generated peak runoff to be accommodated by the improvement (cfs)}}$$

- [d] Water supply. The applicant's proportionate share of water distribution facilities, including the installation, relocation, or replacement of water mains, hydrants, valves, and appurtenances associated therewith shall normally be computed in accordance with the rules of the serving water utility. If allocation of cost is to be made under the jurisdiction of the Borough, procedures similar

to those described for sanitary sewers, roadway and drainage improvements shall be used.

§ 150-99. Costs included.

The cost of an improvement shall be construed to encompass all costs including, but not limited to, planning, feasibility studies, surveys, property and easement acquisition, design and construction. Such costs shall also include all legal, accounting, surveying, engineering, and other professional costs. Such costs may also include the cost of eminent domain proceedings, reasonable contingencies and costs of financing during construction.

§ 150-100. Escrow accounts.

Where the proposed off-tract improvement is to be undertaken at a future date, the monies required for the improvement shall be deposited in an interest-bearing account to the credit of the Borough in a separate account until such time as the improvement is constructed. If the off-tract improvement is not begun within the period from the time of deposit as specified by law, all monies and interest shall be returned to the applicant.

ARTICLE XII

Specification of Documents to be Submitted**§ 150-101. Purpose.**

The documents to be submitted are intended to provide the Planning Board with sufficient information and data to assure compliance with all municipal codes and specifications and to ensure that the proposed development meets the design and improvement requirements of this chapter. The specification of documents is based on the type of development and particular stage of development application.

§ 150-102. Requirements.

The documents to be submitted are shown on the following pages.²⁴⁶ In specific cases and for documented reasons, the Planning Board may waive the submission of a particular document or require the submission of additional documents. The reasons for the waiver shall be indicated in the minutes of the Planning Board.

§ 150-103. Borough Engineer's report required for variance in steep slope zone. [Amended 1-13-1999 by Ord. No. 18-98]

Any application for variance in a steep slope zone must include the Borough Engineer's review and report prior to being deemed complete by the Board and ready for action.

246.Editor's Note: Said pages are on file in the Borough offices.

ARTICLE XIII
Affordable Housing Requirements
[Added 9-26-2018 by Ord. No. 15-2018]

§ 150-104. Affordable housing mandatory set-aside. [Added 9-26-2018 by Ord. No. 17-2018]

- A. Purpose. This section is intended to ensure that any site that benefits from a rezoning, variance or redevelopment plan approved by the Borough or the Borough Planning/Zoning Board that results in multifamily residential development of five dwelling units or more produces affordable housing at a set-aside rate of 20%. This section shall apply except where inconsistent with applicable law. This section will not apply to the Borough's CDB, HBD, LI, R-TH and OR Zones, as said zones already have affordable housing set-aside requirements.
- B. Affordable housing mandatory set-aside requirement.
- (1) If the Borough or the Borough's Planning Board permits the construction of multifamily or single-family attached residential development that is approvable and developable, as defined at N.J.A.C. 5:93-1.3,²⁴⁷ the Borough or the Borough's Planning Board shall require that an appropriate percentage of the residential units be set aside for low- and moderate-income households. This requirement shall apply beginning with the effective date the ordinance creating this section was adopted to any multifamily or single-family attached residential development, including the residential portion of a mixed-use project, which consists of five or more new residential units, whether permitted by a zoning amendment, a variance granted by the Borough's Planning Board, or adoption of a redevelopment plan or amended redevelopment plan in areas in need of redevelopment or rehabilitation. For any such development for which the Borough's land use ordinances (e.g., zoning or an adopted redevelopment plan) already permitted residential development as of the effective date the ordinance creating this section was adopted, this requirement shall only apply if the Borough or the Borough's Planning Board permits an increase in approvable and developable gross residential density to at least twice the permitted approvable and developable gross residential density as of the effective date the ordinance creating this section was adopted. Nothing in this subsection precludes the Borough or the Borough's Planning Board from imposing an affordable housing set-aside in a development not required to have a set-aside pursuant to this subsection consistent with N.J.S.A. 52:27D-311h and other applicable law. For all inclusionary projects, the appropriate set-aside percentage will be 20%. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a redevelopment plan or amended redevelopment plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project. This requirement does not apply to any sites or specific zones otherwise identified in the Borough's settlement agreement with FSHC, which was executed by the Borough on January 26, 2018, or in the Borough's 2018 Housing Element and Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein. As such, this section will not apply to the Borough's CDB, HBD, LI, R-TH and OR Zones, as said zones already have affordable housing set-aside requirements.
 - (2) Furthermore, this section shall not apply to developments containing four or fewer dwelling units. All subdivision and site plan approvals of qualifying residential developments shall be conditioned upon compliance with the provisions of this section. Where a developer demolishes existing dwelling units and builds new dwelling units on the same site, the provisions of this

247. Editor's Note: N.J.A.C. 5:93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, expired on October 16, 2016. See: 43 N.J.R. 1203(a).

section shall apply only if the net number of dwelling units is five or more.

§ 150-105. Affordable housing obligation.

A. Purpose.

- (1) This section is intended to assure that very-low-, low-, and moderate-income units ("affordable units") are created with controls on affordability and that very-low-, low-, and moderate-income households shall occupy these units. This section shall apply except where inconsistent with applicable law.
- (2) The Borough of Atlantic Highlands 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. (hereinafter "Fair Share Plan"). The Fair Share Plan was endorsed by the Borough Council. The Fair Share Plan describes how the Borough of Atlantic Highlands shall address its fair share of very-low-, low-, and moderate-income housing as documented in the Fair Share Plan itself, the settlement agreement entered into between the Borough and Fair Share Housing Center ("FSHC") on January 26, 2018 (hereinafter "FSHC settlement agreement"), and the Superior Court order approving same, which was entered by the Court on May 24, 2018, after a properly noticed fairness hearing.
- (3) The Borough of Atlantic Highlands shall track the status of the implementation of the Fair Share Plan.

B. Monitoring and reporting requirements. The Borough of Atlantic Highlands shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its Superior-Court-approved Housing Element and Fair Share Plan:

- (1) Beginning one year after the entry of the Borough's Round 3 Judgment of Compliance and Repose, and on every anniversary of that date through 2025, the Borough shall provide an annual report of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs (NJDCA), Council on Affordable Housing (COAH), or Local Government Services (NJLGS). The report shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
- (2) Beginning one year after approval of the settlement agreement entered into between the Borough and FSHC after a fairness hearing, and on every anniversary of that date through 2025, the Borough agrees to provide an annual report of the status of all affordable housing activity within the municipality through posting on the municipal website, with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by COAH, or any other forms endorsed by the Superior Court-appointed Special Master and FSHC.
- (3) The Fair Housing Act²⁴⁸ includes two provisions regarding action to be taken by the Borough during its ten-year repose period. The Borough will comply with those provisions as follows:

248. Editor's Note: See N.J.S.A. 52:27D-301 et seq.

- (a) For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether the mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the Borough, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether the mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Superior Court regarding these issues.
- (b) For the review of very-low-income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the entry of the Borough's Judgement of Compliance and Repose, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very-low-income requirements, including the family very-low-income requirements referenced herein. Such posting shall invite any interested party to submit comments to the Borough and Fair Share Housing Center on the issue of whether the Borough has complied with its very-low-income housing obligation under the terms of this settlement.
- (c) In addition to the foregoing postings, the Borough may also elect to file copies of its reports with COAH or its successor agency at the state level.

C. Definitions. The following terms when used in this section shall have the meanings given in this section:

ACCESSORY APARTMENT — A self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

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

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

ADMINISTRATIVE AGENT — The entity designated by the Borough responsible for the administration of affordable units in accordance with this section, applicable COAH regulations and the Uniform Housing Affordability Controls (UHAC) (N.J.A.C. 5:80-26.1 et seq.).

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

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

AFFORDABLE — A sales price or rent within the means of a low- or moderate-income household as defined by COAH in its applicable regulations or an equivalent controlling New Jersey state agency; in the case of an ownership unit, the sales price for the unit shall conform to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, the rent for the unit shall conform to the standards set forth in N.J.A.C. 5:80-26.12, 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 Borough's 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 the Borough's Fair Share Plan prepared or implemented to address the Borough's fair share obligation.

AFFORDABLE UNIT — A housing unit proposed or created pursuant to the Act, credited pursuant to applicable COAH regulations, the FSHC settlement agreement, or an order of the Superior Court.

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 such that: 1) all the residents of the development where the unit is situated are 62 years of age or older; or 2) at least 80% of the units are occupied by one person that is 55 years of age or older; or 3) the development has been designated by the Secretary of the United States Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607(b)(2).

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

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

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

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 — The New Jersey Council on Affordable Housing.

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, entity, 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.

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 total gross annual household income equal to 50% or less of the median household income.

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

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

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

MEDIAN-INCOME — The median income by household size for the applicable county, as adopted annually by the Department.

MODERATE-INCOME HOUSEHOLD — A household with a total gross annual household income in excess of 50% but less than 80% of the median household income.

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

MUNICIPAL HOUSING LIAISON — The employee charged by the governing body with the responsibility for oversight and administration of the affordable housing program for Atlantic Highlands.

NONEXEMPT SALE — Any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses 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.

RANDOM SELECTION PROCESS — A process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

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 the Department's adopted regional income limits published annually by COAH or a successor entity, or established by the Court.

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

THE DEPARTMENT — 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.).

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

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

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

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.

D. Applicability.

- (1) The provisions of this section shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Atlantic Highlands pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.
- (2) This section shall apply to all developments that contain low- and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

E. Rehabilitation programs.

- (1) The Borough of Atlantic Highlands and FSHC have agreed that the Borough's Round 3 (1999-2025) indigenous need rehabilitation obligation is 51 units. The Borough will address its Round 3 rehabilitation obligation via participation in the Monmouth County Rehabilitation Program and/or hiring a separate qualified entity to rehabilitate units in the Borough. The rehabilitation programs will update and renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
 - (a) All rehabilitated rental and owner-occupied units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner-occupied units, the control period will be enforced with a lien, and for renter-occupied units, the control period will be enforced with a deed restriction.
 - (b) The Borough of Atlantic Highlands shall dedicate an average of at least \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
 - (c) Units in the rehabilitation programs shall be exempt from N.J.A.C. 5:93-9²⁴⁹ and UHAC

249. Editor's Note: N.J.A.C. 5:93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, expired on October 16, 2016. See: 43 N.J.R. 1203(a).

requirements, but shall be administered in accordance with the following:

- [1] If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:93-9²⁵⁰ and UHAC.
- [2] If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:93-9²⁵¹ and UHAC.
- [3] Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:93-9²⁵² or the standards issued by a New Jersey administrative agency with proper authority to issue such standards.
- [4] Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:93-9²⁵³ and UHAC, except that households in owner-occupied units shall be exempt from the regional asset limit.

F. Alternative living arrangements.

- (1) The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8²⁵⁴ and UHAC, with the following exceptions:
 - (a) Affirmative marketing (N.J.A.C. 5:80-26.15); provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Superior Court;
 - (b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
- (2) With the exception of units established with capital funding through a twenty-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least thirty-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Superior Court.
- (3) The service provider for the alternative living arrangement shall act as the administrative agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

G. Phasing schedule for inclusionary developments. In inclusionary developments, the following schedule shall be followed:

250. Editor's Note: N.J.A.C. 5:93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, expired on October 16, 2016, See: 43 N.J.R. 1203(a).

251. Editor's Note: N.J.A.C. 5:93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, expired on October 16, 2016, See: 43 N.J.R. 1203(a).

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Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
25	0
25+1	10
50	50
75	75
90	100

H. New construction.

(1) Low/moderate split and bedroom distribution of affordable housing units:

- (a) The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least 13% of all restricted rental units shall be very-low-income units (affordable to a household earning 30% or less of regional median income by household size). The very-low-income units shall be counted as part of the required number of low-income units within the development. At least 50% of the very-low-income units must be available to families.
- (b) In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be very-low- or low-income units.
- (c) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - [1] The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
 - [2] At least 30% of all low- and moderate-income units shall be two-bedroom units;
 - [3] At least 20% of all low- and moderate-income units shall be three-bedroom units; and
 - [4] The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
- (d) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

(2) Accessibility requirements:

- (a) 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.
- (b) 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:

- [1] An adaptable toilet and bathing facility on the first floor; and
- [2] An adaptable kitchen on the first floor; and
- [3] An interior accessible route of travel on the first floor; and
- [4] 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
- [5] If all of the foregoing requirements in Subsection H(2)(b)[1] through [4] above cannot be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of Subsection H(2)(b)[1] through [4] above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
- [6] 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 Atlantic Highlands has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
 - [a] Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - [b] To this end, the builder of restricted units shall deposit funds into the Borough of Atlantic Highlands' Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - [c] The funds deposited under Subsection H(2)(b)[6] shall be used by the Borough of Atlantic Highlands for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - [d] The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Borough of Atlantic Highlands for the conversion of adaptable to accessible entrances.
 - [e] 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 Borough Chief Financial Officer, who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
- [7] 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.

(3) Design:

- (a) In inclusionary developments, very-low-, low- and moderate-income units shall be integrated with the market units to the extent possible.
- (b) In inclusionary developments, very-low-, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

(4) Maximum rents and sales prices:

- (a) In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD.
- (b) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52% of median income.
- (c) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13% of all low- and moderate-income rental units shall be affordable to very-low-income households, which very-low-income units shall be part of the low-income requirement.
- (d) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.
- (e) In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
 - [1] A studio shall be affordable to a one-person household;
 - [2] A one-bedroom unit shall be affordable to a 1.5-person household;
 - [3] A two-bedroom unit shall be affordable to a three-person household;
 - [4] A three-bedroom unit shall be affordable to a 4.5-person household; and
 - [5] A four-bedroom unit shall be affordable to a six-person household.
- (f) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
 - [1] A studio shall be affordable to a one-person household;
 - [2] A one-bedroom unit shall be affordable to a 1.5-person household; and

- [3] A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- (g) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowners' association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (h) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate size household, including an allowance for tenant-paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (i) Income limits for all units that are part of the Borough's Housing Element and Fair Share Plan, and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1, shall be updated by the Borough annually within 30 days of the publication of determinations of median income by HUD as follows:
- [1] The income limit for a moderate-income unit for a household of four shall be 80% of the HUD determination of the median income for COAH Region 4 for a family of four. The income limit for a low-income unit for a household of four shall be 50% of the HUD determination of the median income for COAH Region 4 for a family of four. The income limit for a very-low-income unit for a household of four shall be 30% of the HUD determination of the median income for COAH Region 4 for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than the previous year.
- [2] The income limits are based on carrying out the process in Subsection H(4)(i)[1] based on the HUD determination of median income for the current fiscal year, and shall be utilized by the Borough until new income limits are available.
- (j) In establishing sale prices and rents of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by the Council:
- [1] The price of owner-occupied very-low-, low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region determined pursuant to Subsection H(4)(i). In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
- [2] The rents of very-low-, low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Southern New Jersey Area, upon its publication for the prior calendar year. This increase shall not exceed 9% in any one year. Rents for units constructed pursuant to

low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

I. Utilities.

- (1) Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- (2) Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by the NJDCA for its Section 8 program.

J. Occupancy standards. In referring certified households to specific restricted units, the administrative agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:

- (1) Provide an occupant for each bedroom;
- (2) Provide children of different sexes with separate bedrooms;
- (3) Provide separate bedrooms for parents and children; and
- (4) Prevent more than two persons from occupying a single bedroom.

K. Control periods for restricted ownership units and enforcement mechanisms.

- (1) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this section for a period of at least 30 years, until Atlantic Highlands Borough takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- (2) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (3) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Borough's administrative agent, or an administrative agent appointed by a particular developer, shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- (4) At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Borough's administrative agent, or an administrative agent appointed by a particular developer, a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first nonexempt sale after the unit's release from the restrictions set forth in this section, an amount equal to the difference between the unit's nonrestricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (5) The affordability controls set forth in this section shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (6) A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or

a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

- L. Price restrictions for restricted ownership units, homeowners' association fees and resale prices. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
- (1) The initial purchase price for a restricted ownership unit shall be approved by the Borough's administrative agent, or an administrative agent appointed by a particular developer.
 - (2) The Borough's administrative agent, or an administrative agent appointed by a particular developer, shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
 - (3) The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowners' association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers, unless the master deed for the inclusionary project was executed prior to the enactment of UHAC.
 - (4) The owners of restricted ownership units may apply to the Borough's administrative agent, or an administrative agent appointed by a particular developer, to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.
- M. Buyer income eligibility.
- (1) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
 - (2) The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowners' and private mortgage insurance and condominium or homeowners' association fees, as applicable) does not exceed 33% of the household's eligible monthly income.
- N. Limitations on indebtedness secured by ownership unit; subordination.
- (1) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Borough's administrative agent, or an administrative agent appointed by a particular developer, for a determination in writing that the proposed indebtedness complies with the provisions of this section, and the Borough's administrative agent, or an administrative agent appointed by a particular developer, shall issue such determination prior to the owner incurring such indebtedness.
 - (2) With the exception of first purchase money mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of the unit, as such price is determined by the

Borough's administrative agent, or an administrative agent appointed by a particular developer, in accordance with N.J.A.C. 5:80-26.6(b).

O. Capital improvements to ownership units.

- (1) The owners of restricted ownership units may apply to the Borough's administrative agent, or an administrative agent appointed by a particular developer, to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit 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, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Borough's administrative agent, or an administrative agent appointed by a particular developer, at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale, provided the price, which shall be subject to ten-year, straight-line depreciation, has been approved by the Borough's administrative agent, or an administrative agent appointed by a particular developer. Unless otherwise approved by the Borough's administrative agent, or an administrative agent appointed by a particular developer, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

P. Control periods for restricted rental units.

- (1) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this section for a period of at least 30 years, until Atlantic Highlands Borough takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- (2) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the Records Office of the County of Monmouth. A copy of the filed document shall be provided to the Borough's administrative agent within 30 days of the receipt of a certificate of occupancy.
- (3) A restricted rental unit shall remain subject to the affordability controls described in this section despite the occurrence of any of the following events:
 - (a) Sublease or assignment of the lease of the unit;
 - (b) Sale or other voluntary transfer of the ownership of the unit; or
 - (c) The entry and enforcement of any judgment of foreclosure on the property containing the unit.

Q. Rent restrictions for rental units; leases.

- (1) A written lease shall be required for all restricted rental units, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Borough's administrative agent, or an administrative agent appointed by a particular developer.
- (2) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Borough's administrative agent, or an administrative agent appointed by a particular developer.
- (3) Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the developer and/or landlord or to the Borough's administrative agent appointed by a particular developer. If the fees are paid to the Borough's administrative agent or an administrative agent appointed by a particular developer, they are to be applied to the costs of administering the controls applicable to the unit as set forth in this section.
- (4) No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least 15% of the total number of dwelling units are restricted rental units in compliance with this section.

R. Tenant income eligibility.

- (1) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - (a) Very-low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of the regional median household income by household size.
 - (b) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of the regional median household income by household size.
 - (c) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of the regional median household income by household size.
- (2) The Borough's administrative agent, or a qualified administrative agent appointed by a particular developer, shall certify a household as eligible for a restricted rental unit when the household is a very-low-income household, 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. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - (a) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - (b) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;

- (c) The household is currently in substandard or overcrowded living conditions;
 - (d) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (e) The household documents reliable anticipated third-party assistance from an outside source, such as a family member, in a form acceptable to the administrative agent and the owner of the unit.
- (3) The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsection R(2)(a) through (e) above with the Borough's administrative agent, or an administrative agent appointed by a particular developer, who shall counsel the household on budgeting.

S. Municipal Housing Liaison.

- (1) The position of Municipal Housing Liaison (MHL) for the Borough of Atlantic Highlands is established by this section. The Borough shall make the actual appointment of the MHL by means of a resolution.
- (a) The MHL must be either a full-time or part-time employee of Atlantic Highlands.
 - (b) The person appointed as the MHL must be reported to the Superior Court and thereafter posted on the Borough's website.
 - (c) The MHL must meet all the requirements for qualifications, including initial and periodic training, if such training is made available by COAH or the DCA.
 - (d) The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Atlantic Highlands, including the following responsibilities which may not be contracted out to the administrative agent, or the administrative agent appointed by a specific developer:
 - [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] The implementation of the affirmative marketing plan and affordability controls;
 - [3] When applicable, supervising any contracting administrative agent;
 - [4] Monitoring the status of all restricted units in the Borough's Fair Share Plan;
 - [5] Compiling, verifying and submitting annual reports as required;
 - [6] Coordinating meetings with affordable housing providers and administrative agents, as applicable; and
 - [7] Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the Affordable Housing Professionals of New Jersey (AHPNJ), if such continuing education opportunities are made available by COAH or the DCA.
- (2) Subject to the approval of the Superior Court, the Borough of Atlantic Highlands shall designate one or more administrative agent(s) to administer and to affirmatively market the affordable units constructed in the Borough in accordance with UHAC and this section.

T. Administrative agent. An administrative agent may be either an independent entity serving under contract to and reporting to the Borough, or reporting to a specific individual developer. The fees of the administrative agent shall be paid by the owners of the affordable units for which the services of the administrative agent are required. The Borough administrative agent shall monitor and work with any individual administrative agents appointed by individual developers. The administrative agent(s) shall perform the duties and responsibilities of an administrative agent as set forth in UHAC, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:

(1) Affirmative marketing:

- (a) Conducting an outreach process to affirmatively market affordable housing units in accordance with the affirmative marketing plan of the Borough of Atlantic Highlands and the provisions of N.J.A.C. 5:80-26.15; and
- (b) Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

(2) Household certification:

- (a) Soliciting, scheduling, conducting and following up on interviews with interested households;
- (b) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
- (c) Providing written notification to each applicant as to the determination of eligibility or noneligibility;
- (d) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
- (e) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located;
- (f) Employing a random selection process as provided in the affirmative marketing plan of the Borough of Atlantic Highlands when referring households for certification to affordable units; and
- (g) Notifying the following entities of the availability of affordable housing units in the Borough of Atlantic Highlands: FSHC, the New Jersey State Conference of the NAACP, the Latino Action Network, STEPS, OCEAN Inc., the Greater Red Bank, Asbury Park/ Neptune, Bayshore, Greater Freehold, Greater Long Branch, and Trenton Branches of the NAACP and the Supportive Housing Association.

(3) Affordability controls:

- (a) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
- (b) Creating and maintaining a file on each restricted unit for its control period, including the

recorded deed with restrictions, recorded mortgage and note, as appropriate;

- (c) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Monmouth County Register of Deeds or the Monmouth County Clerk's office after the termination of the affordability controls for each restricted unit;
 - (d) Communicating with lenders regarding foreclosures; and
 - (e) Ensuring the issuance of continuing certificates of occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.
- (4) Resales and re-rentals:
- (a) Instituting and maintaining an effective means of communicating information between owners and the Borough's administrative agent, or any administrative agent appointed by a specific developer, regarding the availability of restricted units for resale or re-rental; and
 - (b) Instituting and maintaining an effective means of communicating information to very-low-, low- and moderate-income households regarding the availability of restricted units for resale or re-rental.
- (5) Processing requests from unit owners:
- (a) Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this section;
 - (b) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air-conditioning systems;
 - (c) Notifying the Borough of an owner's intent to sell a restricted unit; and
 - (d) Making determinations on requests by owners of restricted units for hardship waivers.
- (6) Enforcement:
- (a) Securing annually from the Borough a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
 - (b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Borough's administrative agent, or any administrative agent appointed by a specific developer;
 - (c) Posting annually, in all rental properties (including two-family homes), a notice as to the maximum permitted rent together with the telephone number of the Borough's administrative agent, or any administrative agent appointed by a specific developer, where complaints of excess rent or other charges can be made;

- (d) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
 - (e) Establishing a program for diverting unlawful rent payments to the Borough's Affordable Housing Trust Fund; and
 - (f) Creating and publishing a written operating manual for each affordable housing program administered by the Borough's administrative agent, or any administrative agent appointed by a specific developer, to be approved by the Borough Council and the Superior Court, setting forth procedures for administering the affordability controls.
- (7) Additional responsibilities:
- (a) The administrative agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
 - (b) The administrative agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this section. The Borough's administrative agent will be responsible for collecting monitoring information from any administrative agents appointed by specific developers.
 - (c) The Borough's administrative agent, or any administrative agent appointed by a specific developer, shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

U. Affirmative marketing requirements.

- (1) The Borough of Atlantic Highlands shall adopt by resolution an affirmative marketing plan that is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- (2) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs marketing activities toward Housing Region 4 and is required to be followed throughout the period of restriction.
- (3) The affirmative marketing plan shall provide a regional preference for all households that live and/or work in Housing Region 4, composed of Mercer, Monmouth and Ocean Counties.
- (4) The Borough has the ultimate responsibility for adopting the affirmative marketing plan and for the proper administration of the affirmative marketing program, including initial sales and rentals and resales and re-rentals. The Borough's administrative agent designated by the Borough of Atlantic Highlands, or any administrative agent appointed by a specific developer, shall implement the affirmative marketing plan to assure the affirmative marketing of all affordable units.
- (5) In implementing the affirmative marketing plan, the Borough's administrative agent, or any administrative agent appointed by a specific developer, shall provide a list of counseling services to very-low-, low- and moderate-income applicants on subjects such as budgeting,

credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

- (6) The affirmative marketing plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the affirmative marketing plan, the Borough's administrative agent, or any administrative agent appointed by a specific developer, shall consider the use of language translations where appropriate.
- (7) The affirmative marketing process for available affordable units shall begin at least 120 days prior to the expected date of occupancy.
- (8) Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; and the municipal building in which the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request.
- (9) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

V. Enforcement of affordable housing regulations.

- (1) Upon the occurrence of a breach of any of the regulations governing an affordable unit by an owner, developer or tenant, the Borough shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- (2) After providing written notice of a violation to an owner, developer or tenant of a low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the Borough may take the following action(s) against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - (a) The Borough may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the owner, developer or tenant is adjudged by the Superior 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:
 - [1] A fine of not more than \$2,000 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
 - [2] In the case of an owner who has rented a very-low-, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Atlantic Highlands Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - [3] In the case of an owner who has rented a 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.
 - (b) The Borough may file a court action in the Superior Court seeking a judgment that would

result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.

- [1] The judgment shall be enforceable, at the option of the Borough, by means of an execution sale by the Sheriff, at which time the 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 Borough, including attorney's fees. The violating owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.
- [2] The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the Borough for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the Borough in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the Borough in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the Borough for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the Borough for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the Borough. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Borough, whether such balance shall be paid to the owner or forfeited to the Borough.
- [3] Foreclosure by the Borough 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.
- [4] If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the Borough 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 very-low-, 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.
- [5] Failure of the very-low-, low- or moderate-income unit to be either sold at the

Sheriff's sale or acquired by the Borough shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the Borough, with such offer to purchase being equal to the maximum resale price of the very-low-, low- or moderate-income unit as permitted by the regulations governing affordable housing units.

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

W. Appeals. Appeals from all decisions of an administrative agent appointed pursuant to this section shall be filed in writing with the Superior Court.