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April 9, 2019 – COMBINED AGENDA/REGULAR MEETING
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CALL TO ORDER

The mayor called the meeting to order at 8:00 PM. Those assembled saluted the flag and the mayor read the open public meetings statement in accordance with the law.

ROLL CALL

Present: Baldassare, Carpenter, Esposito, Harris, Bianchi

Absent:

Also Present: Administrator Monaco, Attorney Belardo, Engineer Timko, Deputy Municipal Clerk Pisano

SWEARING IN CEREMONY

[Resolution #2019-0195](#) - *Personnel Appointment Timothy Polizzi – Patrol Officer – Police Department*
Mr. Baldassare recused himself.

Motion by Harris, second by Esposito, and unanimously agreed to approve Resolution #2019-0195.

WHEREAS, the full-time position of Patrol Officer became vacant due to a resignation; and

WHEREAS, the Chief of Police, Township Administrator and Human Resources Manager have deemed it necessary to fill this position; and

WHEREAS, Timothy Polizzi has applied for and is qualified to fill said position; and

WHEREAS, the Chief of Police, Township Administrator and Human Resources Manager recommend appointment of Timothy Polizzi to full time Patrol Officer.

NOW, THEREFORE BE IT RESOLVED by the Township Committee of the Township of Bernards, that Timothy Polizzi be appointed full time Patrol Officer with a hire date of Wednesday, April 10, 2019 at a salary in accordance with the Policemen’s Benevolent Association, Local No. 357 Contract, for a 40-hour work week.

Deputy Clerk Pisano swore in Officer Polizzi.

PUBLIC WORK SESSION

Nothing listed.

CORRESPONDENCE

[Notification of 2019 NJDOT Municipal Aid for N Maple Avenue Project - \\$350,000](#)

The committee acknowledged the correspondence.

[Endorsement by BRFC #1 & Rescue Squad for the Township to Enter Into Agreement with 3rd Party Contractor to Provide Coverage During Peak Periods](#)

The committee acknowledged the correspondence. Shimsky provided a history of the three + year working committee. Township Committee members directed staff to continue investigating third party vendors including an RFP. Carpenter asked that this item be placed on a future agenda as a work session item.

PUBLIC COMMENT

None.

TOWNSHIP COMMITTEE/BOARD REPORTS & STAFF COMMENTS

Comment and staff member reported on their recent activities and boards.

FIRE & RESCUE APPOINTMENT

[Resolution #2019-0209](#) - *Appointment to Membership in Township of Bernards Volunteer First Aid Squad of the Basking Ridge Fire Company #1 Holly Conkling Full, Member*

Motion by Bianchi, second by Harris, and unanimously agreed that the resolution be approved.

WHEREAS, pursuant to § 2-16.1 of the Revised General Ordinances of the Township of Bernards, there shall be a first aid department known as the "Township of Bernards First Aid and Emergency Department" consisting of the First Aid Squad of the Basking Ridge Fire Company #1 and the Liberty Corner First Aid Squad; and

WHEREAS, the First Aid Squad of the Basking Ridge Fire Company is recommending, Holly Conkling, for appointment as a Full member.

NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Bernards that is hereby appointed as a member of the Basking Ridge Fire Company #1 effective this date.

UNFINISHED BUSINESS

Nothing listed.

NEW BUSINESS

Consent Agenda

The items listed within the consent agenda portion of the meeting have been referred to the Township Committee for reading and study, linked to the posted agenda on the website, are considered routine and will be enacted by one motion of the Township Committee with no separate discussion. If separate discussion is required, the item may be removed from the agenda by township committee action and placed on the regular agenda under new business.

Motion by Baldassare, second by Esposito, that the 03/26/2019 Open Session minutes, Resolutions #2019-0197, #2019-0198, #2019-0199, and #2019-0200 be removed from the consent agenda and the remaining items be approved.

Roll Call

Aye: Baldassare, Carpenter, Esposito, Harris, Bianchi
Nay:
Abstain:
Motion carried.

**** Begin Consent Agenda****

[Resolution #2019-0192](#) - Approval of the Bill List Dated 04/09/2019

BE IT RESOLVED, that the bill list dated 04/09/2019 be audited, and if found correct, be paid.

April 9, 2019
12:27 PM

TOWNSHIP OF BERNARDS
Check Register By Check Date

Page No: 1

Range of Checking Accts: CASH - CHECKING to Last Range of Check Dates: 03/27/19 to 04/09/19
Report Type: All Checks Report Format: Super Condensed Check Type: Computer: Y Manual: Y Dir Deposit:
Y
=====

Check #	Check Date	Vendor	Amount Paid	Reconciled/Void	Ref Num

CASH - CHECKING CURRENT CHECKING					
119599	03/27/19	P0013	PUBLIC EMP. RETIREMENT SYSTEM	1,061,412.00	1430
119600	03/27/19	P0032	POLICE & FIREMENS RETIREMENT	1,231,847.00	1430
119601	04/09/19	90019	CENTRELLI, DAVID	63.09	1431 Direct Deposit
119602	04/09/19	90310	FALLON, BRIAN	159.07	1431 Direct Deposit
119603	04/09/19	90327	MCKNIGHT, ALEX	27.47	1431 Direct Deposit
119604	04/09/19	90366	ANDRIOLO, KAREN	30.92	1431 Direct Deposit
119605	04/09/19	90388	O'GRADY, SEAN	91.58	1431 Direct Deposit
119606	04/09/19	90395	NERI, MARK	54.27	1431 Direct Deposit
119607	04/09/19	90507	GANDER, JENNIFER	82.00	1431 Direct Deposit
119608	04/09/19	90514	MERGHART, DEBRA	16.51	1431 Direct Deposit
119609	04/09/19	90520	SWEENEY, MICHAEL	15.31	1431 Direct Deposit
119610	04/09/19	90522	BARBER, JACQUELINE	17.10	1431 Direct Deposit
119611	04/09/19	90528	KOEDERITZ, NANCY	250.00	1431 Direct Deposit
119612	04/09/19	90576	CALJEAN, PATRICIA	134.77	1431 Direct Deposit
119613	04/09/19	90578	ZIMMERMAN, CHRISTOPHER	49.00	1431 Direct Deposit
119614	04/09/19	90613	RIVERA, ANNMARIE	68.40	1431 Direct Deposit
119615	04/09/19	90618	BROWNE, DEBORAH	16.24	1431 Direct Deposit
119616	04/09/19	B0203	DIFRANCESCO, BATEMAN, KUNZMAN,	2,614.50	1431 Direct Deposit
119617	04/09/19	A0044	APPROVED FIRE PROTECTION SYS	1,736.57	1432
119618	04/09/19	A0065	ANIMAL CARE EQUIPMENT & SVCS.	263.96	1432
119619	04/09/19	A0174	ALL SPORTS STADIUM, LLC	620.00	1432
119620	04/09/19	A0232	ARROW ELEVATOR, INC.	300.00	1432
119621	04/09/19	A0289	ARNOLD, LINDA	50.00	1432
119622	04/09/19	A0438	AQUARIUS IRRIGATION SUPPLY INC	505.60	1432
119623	04/09/19	A0589	AFTERMATH SERVICES, LLC	245.00	1432
119624	04/09/19	A0611	AMERICAN WEAR, INC	870.56	1432

119625	04/09/19	A0647	ADVANCED ELECTRONIC DESIGNS	48,547.49	1432
119626	04/09/19	A0649	AED SUPERSTORE	432.00	1432
119627	04/09/19	B0001	BAKER & TAYLOR, INC.	4,530.70	1432
119628	04/09/19	B0014	BREWER ASSOCIATES	50.00	1432
119629	04/09/19	B0026	BERNARDS TOWNSHIP CURRENT	10,825.39	1432
119630	04/09/19	B0034	BERNARDS TOWNSHIP PAYROLL ACCT	557,145.25	1432
119631	04/09/19	B0044	BASKING RIDGE ANIMAL HOSPITAL	36,584.34	1432
119632	04/09/19	B0128	INTERNATIONAL CODE COUNCIL	557.54	1432
119633	04/09/19	B0388	BLACKSTONE AUDIO BOOKS	34.94	1432
119634	04/09/19	B0581	BUY WISE AUTO PARTS	22.91	1432
119635	04/09/19	B0609	BALTIMORE COUNTY POLICE	195.00	1432
119636	04/09/19	B0752	BORING BROTHERS INC	295.81	1432
119637	04/09/19	C0028	CY DRAKE LOCKSMITHS, INC.	127.00	1432
119638	04/09/19	C0083	CDW GOVERNMENT, INC.	25,429.10	1432
119639	04/09/19	C0289	CHIEF SUPPLY	649.00	1432
119640	04/09/19	C0482	OPTIMUM	156.94	1432
119641	04/09/19	C0597	CLIFFSIDE BODY CORPORATION	4,774.82	1432
119642	04/09/19	C0636	CENTER POINT LARGE PRINT	93.48	1432
119643	04/09/19	C0760	CHRISTINA TRUST AS CUSTODIAN	283,362.54	1432
119644	04/09/19	C0773	COMMUNITY HOME CARE	659.00	1432
119645	04/09/19	C0794	CARAMOOR CENTER - MUSIC & ARTS	1,792.00	1432
119646	04/09/19	D0107	DLT SOLUTIONS, LLC	3,866.10	1432
119647	04/09/19	D0380	DRIVERS TIRE & SERVICE CENTER	667.50	1432
119648	04/09/19	D0740	DOVER BRAKE & CLUTCH	547.35	1432
119649	04/09/19	D0754	DC EXPRESS	722.50	1432
119650	04/09/19	E0180	ENFORSYS POLICE SYSTEMS, INC	8,500.00	1432
119651	04/09/19	E0279	ELM USA	107.75	1432
119652	04/09/19	E0284	ENVIROPROBE SERVICE, INC	850.00	1432
119653	04/09/19	F0003	FOLEY, INCORPORATED	71.93	1432
119654	04/09/19	F0047	FULLERTON FORD	3.85	1432
119655	04/09/19	F0158	FLEMINGTON DEPARTMENT STORE	126.95	1432
119656	04/09/19	F0273	FLOWERS ON THE RIDGE	58.95	1432
119657	04/09/19	F0299	FASTENAL CO.	509.10	1432
119658	04/09/19	F0324	FLAGSHIP DENTAL PLANS	455.01	1432
119659	04/09/19	F0330	FIDELITY SECURITY LIFE INS	233.61	1432
119660	04/09/19	G0004	GALLS, INC.	112.70	1432
119661	04/09/19	G0066	GRAINGER INC	1,110.24	1432
119662	04/09/19	G0098	JCP&L	185.82	1432
119663	04/09/19	G0202	GRASS ROOTS TURF PRODUCTS, INC	16,312.50	1432
119664	04/09/19	G0300	GOLD TYPE BUSINESS MACHINES	5,251.50	1432
119665	04/09/19	G0333	BEDMINSTER CAR WASH	154.40	1432
119666	04/09/19	G0509	GREEN ROCK RECYCLING	300.00	1432
119667	04/09/19	G0596	GRIFFITH - ALLIED TRUCKING LLC	10,085.51	1432
119668	04/09/19	G0603	GREEN, ETHAN	270.00	1432
119669	04/09/19	H0178	HOSE SHOP, INC.	324.60	1432
119670	04/09/19	H0246	HOME DEPOT CREDIT SERVICES	1,287.44	1432
119671	04/09/19	I0128	INNOVATIVE DOCUMENT IMAGING	445.00	1432
119672	04/09/19	I0152	IWS TRANSFER SYSTEMS OF NJ	1,694.70	1432
119673	04/09/19	I0155	IDEAL AUTO BODY	870.58	1432
119674	04/09/19	J0015	JESCO, INC.	118.36	1432
119675	04/09/19	J0093	JOHNNY ON THE SPOT, LLC	65.00	1432
119676	04/09/19	J0168	JGB SPORTS, LLC	2,495.00	1432
119677	04/09/19	K0033	KEY-TECH	975.00	1432
119678	04/09/19	K0259	KONICA MINOLTA PREMIER FINANCE	122.00	1432
119679	04/09/19	K0331	KONICA PREMIER FINANCE	82.60	1432
119680	04/09/19	K0334	KONICA MINOLTA BUSINESS	16.40	1432
119681	04/09/19	K0341	KONICA MINOLTA PREMIER FINANCE	98.83	1432
119682	04/09/19	L0116	LAWMEN SUPPLY	222.58	1432
119683	04/09/19	L0187	LAKELAND BUS COMPANY	1,075.00	1432
119684	04/09/19	L0372	LIFESAVERS, INC	1,313.32	1432
119685	04/09/19	L0425	LUSCOMBE, BRIAN & RACHAEL	920.00	1432
119686	04/09/19	M0006	MGL PRINTING SOLUTIONS	141.00	1432
119687	04/09/19	M0261	M.A.I.N., INC.	73,160.84	1432
119688	04/09/19	M0518	KONICA MINOLTA BUSINESS SOL.	252.51	1432
119689	04/09/19	M0518	KONICA MINOLTA BUSINESS SOL.	95.55	1432
119690	04/09/19	M0830	MOTT MACDONALD	2,101.96	1432
119691	04/09/19	M0868	M & P RETIREMENT PLAN	88,304.95	1432
119692	04/09/19	M0887	MERCURIO, ROSALIND	95.00	1432
119693	04/09/19	M0889	MCSWEENEY, EILEEN	50.00	1432
119694	04/09/19	N0006	NEW JERSEY AMERICAN WATER CO.	141.38	1432
119695	04/09/19	N0006	NEW JERSEY AMERICAN WATER CO.	319.36	1432
119696	04/09/19	N0006	NEW JERSEY AMERICAN WATER CO.	200.00	1432
119697	04/09/19	N0006	NEW JERSEY AMERICAN WATER CO.	16.85	1432
119698	04/09/19	N0006	NEW JERSEY AMERICAN WATER CO.	38,364.00	1432
119699	04/09/19	N0006	NEW JERSEY AMERICAN WATER CO.	200.00	1432
119700	04/09/19	N0023	TREASURER, STATE OF NEW JERSEY	13,822.00	1432
119701	04/09/19	N0032	NJ STATE DEPT HEALTH/SR SVCS	183.60	1432
119702	04/09/19	N0040	NATIONAL FIRE PROTECTION ASSN.	1,575.00	1432
119703	04/09/19	N0083	NJRPA	70.00	1432
119704	04/09/19	O0021	OFFICE DEPOT	773.63	1432
119705	04/09/19	O0068	O'BAGEL BAGELRY & DELI	125.00	1432
119706	04/09/19	O0102	OCLC, INC	201.21	1432
119707	04/09/19	O0116	OBERLY, BARRY	990.00	1432
119708	04/09/19	O0135	OUTHOUSE LLC	745.00	1432
119709	04/09/19	P0014	PUBLIC SERVICE ELEC. & GAS CO	9,931.06	1432
119710	04/09/19	P0046	RESERVE ACCOUNT	2,405.23	1432
119711	04/09/19	P0538	PROVIDENT LIFE & ACCIDENT	185.30	1432
119712	04/09/19	P0602	PRAXAIR DISTRIBUTION, INC	25.09	1432
119713	04/09/19	Q0002	CINTAS CORP. - #062	353.20	1432
119714	04/09/19	R0010	REIDER ASSOCIATES, INC.	3,438.90	1432
119715	04/09/19	R0369	RUTGERS -CENTER FOR CONTINUING	3,235.00	1432
119716	04/09/19	R0523	ROSE, DAN	200.00	1432
119717	04/09/19	R0532	RIVELLO, MARIANNE	25.00	1432
119718	04/09/19	S0013	SNAP-ON TOOLS CORPORATION	2,985.00	1432
119719	04/09/19	S0016	STORR TRACTOR COMPANY	392.94	1432
119720	04/09/19	S0081	SOCIETY FOR PUBLIC HEALTH ED	195.00	1432
119721	04/09/19	S0101	STICKEL,KOENIG,SULLIVAN&DRILL	6,419.50	1432
119722	04/09/19	S0184	SOCIETY HILL AT BERNARDS I	590.00	1432
119723	04/09/19	S0227	SHEARON ENVIRONMENTAL DESIGN	23,788.89	1432

TOWNSHIP COMMITTEE MINUTES

04/09/2019

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119724	04/09/19	S0248	SOMERSET HILLS YMCA	922.30	1432
119725	04/09/19	S0443	STAPLES ADVANTAGE	176.54	1432
119726	04/09/19	S0524	STATE TOXICOLOGY LABORATORY	90.00	1432
119727	04/09/19	S0628	STATE OF NEW JERSEY-HB	208,262.10	1432
119728	04/09/19	S0691	SUPERIOR DISTRIBUTORS	34.08	1432
119729	04/09/19	S0854	SOMERSET COUNTRY LIVING	16,376.63	1432
119730	04/09/19	S0962	SCIENCE PRESS USA INC.	302.53	1432
119731	04/09/19	S1028	SCHMIDIG, JOE	315.00	1432
119732	04/09/19	T0066	CENGAGE LEARNING CREDIT SVCS	272.99	1432
119733	04/09/19	T0192	TURN OUT UNIFORMS INC	1,068.86	1432
119734	04/09/19	T0308	TORO NSN	1,860.00	1432
119735	04/09/19	U0001	UNITEMP INC.	3,024.00	1432
119736	04/09/19	V0054	VAL-PAK OF MID-JERSEY, INC.	1,240.00	1432
119737	04/09/19	V0056	VERIZON WIRELESS	683.65	1432
119738	04/09/19	V0058	VERIZON	1,831.78	1432
119739	04/09/19	V0084	VERIZON	439.45	1432
119740	04/09/19	V0124	VERIZON BUSINESS FIOS	364.99	1432
119741	04/09/19	V0177	VERIZON	465.76	1432
119742	04/09/19	V0185	VERIZON NETWORK FLEET	625.35	1432
119743	04/09/19	W0014	BEYER-WARNOCK FLEET	1,389.96	1432
119744	04/09/19	W0016	WARRENVILLE TRUE VALUE	4,730.13	1432
119745	04/09/19	W0074	WELSH'S MOTOR SALES, INC.	444.08	1432
119746	04/09/19	W0236	WHITETAIL SOLUTION	1,600.00	1432
119747	04/09/19	W0241	W.B. MASON CO INC.	307.80	1432
119748	04/09/19	W0259	VENTURA, MIESOWITZ, KEOUGH &	936.00	1432
119749	04/09/19	W0275	WINNING TEAMS BY NISSEL LLC	848.48	1432
119750	04/09/19	W0339	W.B. MASON	113.55	1432
119751	04/09/19	W0347	EDWARD WACKS & ASSOCIATES, LLC	880.20	1432
119752	04/09/19	W0367	WAMS STUDENT ACTIVITIES	100.00	1432
119753	04/09/19	Y0214	YAROSH, DENIS	2,870.66	1432

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Report Totals                Paid      Void      Amount Paid      Amount Void
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Checks:                    139      0      3,865,421.44      0.00
Direct Deposit:           16      0      3,690.23      0.00
=====
Total:                     155      0      3,869,111.67      0.00
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Totals by Year-Fund
Fund Description            Fund      Budget Total      Revenue Total      G/L Total      Total
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CURRENT FUND                8-01      6,009.58      0.00      0.00      6,009.58
CURRENT FUND                9-01     3,441,528.83      0.00      0.00     3,441,528.83
DOG FUND                    9-12      1,167.18      0.00      0.00      1,167.18
GOLF COURSE UTILITY        9-26      30,128.90      0.00      0.00     30,128.90
Year Total:                 3,472,824.91      0.00      0.00     3,472,824.91
CAPITAL FUND                C-04      54,708.91      0.00      0.00     54,708.91
PUBLIC GRANTS                G-02       298.42      0.00      0.00       298.42
TRUST FUNDS                  T-13     273,641.20      0.00      0.00     273,641.20
PROJECTS                     61,628.65      0.00      0.00     61,628.65
Total Of All Funds:        3,869,111.67      0.00      0.00     3,869,111.67
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Resolution #2019-0193 - Issuance of Solicitor's License Alexander Vasquezmora, Alice's Crew, Inc. d/b/a Bridgeville Ice Cream, Periods 01/01/2019–06/30/2019 and 07/01/2019–12/31/2019

WHEREAS, Alexander Vasquezmora, Alice's Crew, Inc. d/b/a Bridgeville Ice Cream, 713-C East Main St., Bridgewater, NJ 08807, has applied for a Solicitor's License for the periods of 01/01/2019–06/30/2019 and 07/01/2019–12/31/2019 for the purposes of selling ice cream from a mobile truck; and

WHEREAS, pursuant to Chapter 4, Section 2 of the Revised General Ordinances of the Township of Bernards, applicant has provided required documentation and paid the applicable fee; and

WHEREAS, the Municipal Clerk, the Chief of Police, the Health Officer, and the Zoning Officer have reviewed said application and recommend approval.

NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Bernards that the application be approved as submitted.

[Resolution #2019-0194](#) - Adoption of the Liberty Corner First Aid Squad (LCFAS), [2019 By-Laws](#), and Acknowledgement of 2019 Membership Roster

WHEREAS, pursuant to SECTION 2-16. of the Revised General Ordinances of the Township of Bernards there shall be First Aid and Emergency Department known as the "Township of Bernards First Aid and Emergency Department made up of the First Aid Squad of the Basking Ridge Fire Company No. 1 and the Liberty Corner First Aid Squad, Inc.; and

WHEREAS, the rules and regulations now and hereafter adopted by the Township Committee, as the same may be amended or supplemented, for the regulation and control of the Department and the personnel thereof are hereby made the rules and regulations of the Township First Aid and Emergency Department; and

NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Bernards as follows:

1. The LCFAS 2019 By-Laws are adopted as submitted.
2. The LCFAS 2019 Roster of members is acknowledged as submitted.

[Resolution #2019-0196](#) - Award of Change Order #1 for Lyons Road Pedestrian Bridge Replacement to Tricon Enterprises, Inc., 322 Beers Street, Keyport, NJ 07735, Decrease of \$8,669.82 (5.98%)

WHEREAS, the Engineering Department requests the following change order be authorized by the Township Committee:

Vendor	CO	Original Award	Amount of Decrease	New Total
	Number 1	\$145,000.00 RA #2018-0384	\$8,669.82 (5.98%)	\$136,330.18
TOTAL CO	CO #1		\$8,669.82 (5.98%)	\$136,330.18

WHEREAS, it is the recommendation of the Township Engineer and Purchasing Agent to award this change order to Tricon Enterprises, Inc., 322 Beers Street, Keyport, NJ 07735; and

WHEREAS, the Chief Financial Officer is directed to credit Capital Ordinance #2387, line account #C-04-55-387-A05.

NOW THEREFORE BE IT RESOLVED by the Township Committee of the Township of Bernards, Somerset County, New Jersey, that the Purchasing Agent is hereby authorized to issue a change order to Tricon Enterprises, Inc., 322 Beers Street, Keyport, NJ 07735.

[Resolution #2019-0201](#) - Award of Change Order #1 for 2017 NJDOT Local Aid Project: Hansom Road and Watchung Drive to AJM Contractors, Inc., 300 Kuller Road, Clifton, NJ 07011 Decrease of \$13,005.12 (2.38%)

WHEREAS, the Engineering Department requests the following change order be authorized by the Township Committee:

Vendor	CO	Original Award	Amount of Decrease	New Total
	Number 1	\$545,497.00 RA# 2018-0317	\$13,005.12 (2.38%)	\$532,491.88
TOTAL CO	CO #1		\$13,005.12 (2.38%)	\$532,491.88

WHEREAS, it is the recommendation of the Township Engineer and Purchasing Agent to award this change order to AJM Contractors, Inc., 300 Kuller Road, Clifton, NJ 07011; and

WHEREAS, the Chief Financial Officer is directed to credit Capital Ordinance #2366, line account #C-04-55-366-A01.

NOW THEREFORE BE IT RESOLVED by the Township Committee of the Township of Bernards, Somerset County, New Jersey, that the Purchasing Agent is hereby authorized to issue a change order to: AJM Contractors, Inc., 300 Kuller Road, Clifton, NJ 07011.

[Resolution #2019-0202](#) - Personnel Appointment Andrew Bercari – Roads Crew Chief - Department of Public Works

WHEREAS, the full-time position of Roads Crew Chief became available due to promotion within the Public Works Department; and

WHEREAS, the Director of Public Works, Township Administrator, and Human Resources Manager have deemed it necessary to fill this position; and

WHEREAS, Andrew Bercari has applied for and is qualified to fill said position; and

WHEREAS, the Director of Public Works, Township Administrator, and Human Resources Manager recommend appointment of Andrew Bercari to full time Roads Crew Chief; and

NOW, THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Bernards that Andrew Bercari be appointed full-time Roads Crew Chief effective April 15, 2019 at an hourly rate of \$24.87 for a 40-hour workweek.

[Resolution #2019-0204](#) - Commendation on the Occasion of Your Retirement James Petrock

WHEREAS, the full-time position of Roads Crew Chief became available due to promotion within the Public Works Department; and

WHEREAS, the Director of Public Works, Township Administrator, and Human Resources Manager have deemed it necessary to fill this position; and

WHEREAS, Andrew Bercari has applied for and is qualified to fill said position; and

WHEREAS, the Director of Public Works, Township Administrator, and Human Resources Manager recommend appointment of Andrew Bercari to full time Roads Crew Chief.

NOW, THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Bernards that Andrew Bercari be appointed full-time Roads Crew Chief effective April 15, 2019 at an hourly rate of \$24.87 for a 40-hour workweek.

[Resolution #2019-0205](#) - Award of Change Order #1 for Stonehouse Road and Southard Park Pedestrian Bridge Replacement to Colonnelli Brothers, Inc., 409 South River Street, Hackensack, NJ 07601 Decrease of \$14,626.26 (10.92%)

WHEREAS, the Engineering Department requests the following change order be authorized by the Township Committee:

Vendor	CO	Original Award	Amount of Decrease	New Total
	Number 1	\$133,970.00 RA# 2018-0430	\$14,626.26 (10.92%)	\$119,343.74
TOTAL CO	CO #1		\$14,626.26 (10.92%)	\$119,343.74

WHEREAS, it is the recommendation of the Township Engineer and Purchasing Agent to award this change order to Colonnelli Brothers, Inc.; and

WHEREAS, the Chief Financial Officer is directed to credit Capital Ordinance #2387, line account #C-04-55-387-A05.

NOW THEREFORE BE IT RESOLVED by the Township Committee of the Township of Bernards, Somerset County, New Jersey, that the Purchasing Agent is hereby authorized to issue a change order to Colonnelli Brothers, Inc., 409 South River Street, Hackensack, NJ 07601.

[Resolution #2019-0206](#) - Authorizing and Approving Purchase of Computer Equipment and Installation Services for the SLR800 Repeater Project for the Fire Department from New Jersey State Co-Operative Contract #T0109 (A83909) to Motorola Solutions, Inc., 1301 Algonquin Road, Schaumburg, Ill 60196 In the Amount Not to Exceed \$ 62,284.78

WHEREAS, the Township of Bernards wishes to purchase from N. J. State Co-Operative Contract #T0109 (A83909) computer equipment and installation services for the SLR800 Repeater Project for the Fire Department; and


WHEREAS, the Chief Financial Officer has certified that funds are available in the budget; the line item appropriation to be charged is line account; Capital Ordinance 2180, #C-04-55-180-A01; and

WHEREAS, the N.J. State Division of Purchase and Property awarded a contract to Motorola Solutions, Inc., 1301 Algonquin Road, Schaumburg, Ill 60196; and

WHEREAS, the Township is authorized to make purchases through cooperative and state contracts pursuant to N.J.S.A. 40A:11-10 and 12; and

WHEREAS, it is the recommendation of the Police Chief and Purchasing Agent to purchase computer equipment and installation services from N. J. State Contract #T0190 (A83909).

NOW THEREFORE BE IT RESOLVED by the Township Committee of the Township of Bernards that the Purchasing Agent be authorized to issue a purchase order to Motorola Solutions, Inc., 1301 Algonquin Road, Schaumburg, Ill 60196 in the amount not to exceed \$62,284.78.

CHIEF FINANCIAL OFFICER CERTIFICATION	
I, Sean McCarthy, Chief Financial Officer of the Township of Bernards, hereby certify that adequate funds are available in the budget; the line item appropriation to be charged is line account Capital Ordinance 2180, #C-04-55-180-A01 in the not to exceed amount of \$ 62,284.78.	
Date: April 1, 2019	 FOR CERTIFICATION ONLY 2019 Sean McCarthy, Chief Financial Officer

[Resolution #2019-0207](#) - Award of Bid for Re-Design of the Old Army Road Retaining Wall Repair to Samson Concrete & Masonry LLC, 120 S. Main Street, Suite A, Phillipsburg, NJ 08865 – In the Amount of \$100,380.05

WHEREAS, the Township of Bernards received bids on Wednesday, March 20, 2019, at 10:30 AM for the Old Army Road Retaining Wall Repair. The bid summary is as follows:

BIDDERS NAME	TOTAL BID AMOUNT
Samson Concrete & Masonry LLC	\$100,380.05
V&K Construction, Inc.	\$105,215.00
CMS Construction Inc.	\$107,335.00
Berto Construction Inc.	\$152,100.00*
Diamond Construction	\$164,490.00

**represents corrected total due to arithmetic error in bid proposal*

WHEREAS, it is the combined recommendation of the Township Engineer, Administrator and Purchasing Agent to award the contract to Samson Concrete & Masonry LLC, 120 S. Main Street, Suite A, Phillipsburg, NJ 08865 in the amount of \$100,380.05; and

WHEREAS, the Chief Financial Officer has certified that funds are available in the budget; the line item appropriations or Capital Ordinance #2337 line account # C-04-55-337-A09; and

WHEREAS, this contract has been awarded to Samson Concrete & Masonry LLC, through a "fair and open process" pursuant to N.J.S.A. 19:44A-20.4, et seq.

NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Bernards, County of Somerset, State of New Jersey, that the bid be awarded to Samson Concrete & Masonry LLC, 120 S. Main Street, Suite A, Phillipsburg, NJ 08865 in the amount of \$100,380.05.

NOW THEREFORE BE IT FURTHER RESOLVED, by the Township Committee of the Township of Bernards that in accordance with the bid specifications, the contract between Bernards Township (“Owner”) and Samson Concrete & Masonry LLC, (“Contractor”) shall contain:

1. Provisions of all labor, material, and equipment necessary to perform all work as indicated on the Drawings and Specified for the Old Army Road Retaining Wall Repair.
2. This contract shall, for all purposes, be deemed a New Jersey Contract and any provision of this contract shall be governed and interpreted with the Laws of the State of New Jersey.
3. Any modification to this contract shall be in writing and signed by both parties and upon obtaining said signatures shall immediately become part of the contract.
4. The cost of this contract is not to exceed the total bid amount unless negotiated in advance of service delivery, and the Township Committee approves an amendment revising that figure.
5. Billing must be rendered within 30 days of service delivery.
6. As required by law, the parties to this contract agree to incorporate into this contract the mandatory affirmative action language promulgated by the Treasurer pursuant to P.L. 1975, c.127, which is attached to resolution as Exhibit B.
7. The Township may terminate this contract if contractor does not fulfill the services as outlined in the Bid Specification, upon five (5) days written notice via certified mail.
8. The work contemplated under the Contract shall be completed within thirty (30) days of the Notice to Proceed Date.
9. The Contractor shall commence the work not later than ten (10) calendar days after the owner has given the Notice to Proceed Date to the Contractor in writing.
10. The completion time period shall include, but not be limited to, the time necessary to prepare shop drawings, to order, process, and deliver all equipment and materials, to obtain necessary permits and approvals, to perform the proper installation contemplated under this Contract and all else necessary and incidental in connection with the performance of this Contract.
11. If the Contractor fails to complete the work within the specified time plus extensions, the Contractor shall be responsible to the Township for liquidated damages in the sum of \$500.00 per day for every day thereafter until the completion and acceptance of the work. Such liquidated damages shall not be considered as a penalty. The Township shall deduct and retain out of any money due or to become due herein to Contract the amount of the liquidated damages.
12. In accordance with bid specifications, if the Contractor, upon notification by the Township of Bernards, fails to execute the contract prepared by the Township attorney within ten (10) days of such notification with the Township of Bernards, the Township may rescind the award of the bid to the Contractor and award the contract to another bidder, and shall have the right to proceed against the guaranty accompanying the bid.

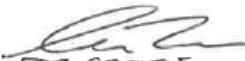
I agree to the terms as stated in this Resolution and by signing this document, as I am committed to follow all terms of this award.

Robert Samson, Managing Member

CHIEF FINANCIAL OFFICER CERTIFICATION

I, Sean McCarthy, Chief Financial Officer of the Township of Bernards, hereby certify that adequate funds are available for the above referenced purchase in the not to exceed amount of \$100,380.05. Monies are available in the Capital Ordinance, #2337, line item account # C-04-55-337-A09.

Date: April 4, 2019



FOR CERTIFICATION
ONLY 2019

Sean McCarthy, Chief Financial Officer

[Resolution #2019-0208](#) - Proclaiming Arbor Day in Bernards Township

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

WHEREAS, Arbor Day is now observed throughout the nation and the world; and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and

WHEREAS, trees in our township increase property values, enhance the economic vitality of business areas, and beautify our community and spiritual renewal.

NOW, THEREFORE, BE IT RESOLVED, the Township Committee of the Township of Bernards does hereby proclaim April 26, 2019 as **ARBOR DAY**; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that in the community of Bernards Township, we urge all citizens to support efforts to protect our trees and woodlands to support our town's urban forestry program; and

NOW, THEREFORE, BE IT FINALLY RESOLVED, that all citizens are urged to plant trees to gladden hearts and promote the well-being of present and future generations.

[Resolution #2019-0210](#) - Approval of Independent Agreement with Central Jersey Housing Resource Center (CJHRC) at a cost not to exceed \$55,575.79 (Funding for this Contract is not from General Revenues, but from Funds Contributed by Developers to the Development Fee Account Pursuant to Section 21-76.16 of Revised Land Use Ordinances of the Twp of Bernards)

WHEREAS, Central Jersey Housing Resource Center (CJHRC) is a nonprofit collaboration of businesses, financial institutions, social service agencies, public officials and housing advocates who work to increase the accessibility and availability of affordable housing in Central New Jersey; and

WHEREAS, CJHRC currently operates a centralized housing resource information center in Somerset County and is a HUD certified agency specialized in the state and federal housing regulations; and

WHEREAS, CJHRC proposes to enter into an agreement with Bernards Township to provide such services as an Affordable Housing Coordinating Agency for existing low and moderate income rental and purchase units pursuant to Uniform Housing Affordability Controls, N.J.A.C. 5:80-16.18 -4i-viii; and

WHEREAS, should the State Legislature or Governor adopt legislation or executive orders that eliminate COAH or no longer require the Township to hire the services of CJHRC, Bernards Township may terminate this Agreement on sixty days written notice and pay CJHRC for the services rendered up to the termination date; and

WHEREAS, this contract was awarded without public advertisement as defined in N.J.S.A. 19:44A-20-7 and pursuant to the provisions of N.J.S.A. 19:44A-20-4; and

WHEREAS, the Chief Financial Officer has certified funds are available in the Affordable Housing Trust Fund line item appropriation or ordinance account #T-13-56-055-COA; and

WHEREAS, funding for this contract are not derived from general revenues but from monies contributed by developers to the development fee account pursuant to Section 21-76.16.

NOW BE IT RESOLVED, that the Business Disclosure Entity Certification and the Determination of Value be placed on file with this resolution; and

NOW BE IT FURTHER RESOLVED, by the Township Committee of the Township of Bernards that we do hereby approve an agreement at a cost not to exceed \$55,575.79 with the Central Jersey Housing Resource Center (CJHRC) effective May 1, 2019 through April 30, 2020; and

NOW THEREFORE BE IT FURTHER RESOLVED, by the Township Committee of the Township of Bernards that we do hereby authorize the Mayor and Clerk to execute the agreement with the Central Jersey Housing Resource Center (CJHRC) on behalf of the Township; and


NOW THEREFORE BE IT FINALLY RESOLVED, by the Township Committee of the Township of Bernards that notice of this contract award be published in the official Township newspaper, and a copy of the resolution be on file and available for public inspection, in the office of the Bernards Township Purchasing Department, Municipal Building, Basking Ridge, New Jersey 07920.

I agree to the terms as stated in the Resolution and by signing this document, I am committed to following all terms of this award.

Sharon Clark, Executive Director CJHRC

CHIEF FINANCIAL OFFICER CERTIFICATION

I, Sean McCarthy, Chief Financial Officer of the Township of Bernards, hereby certify that adequate funds are available for the above referenced purchase in the amount not to exceed \$55,575.79. Monies are available in the Affordable Housing Trust account #T-13-56-055-COA.



FOR CERTIFICATION
ONLY 2019

Sean McCarthy
Chief Financial Officer

Date: April 2, 2019

[Resolution #2019-0211](#) - *Authorizing the Bernards Township Chief Financial Officer to Conduct the Annual Budget Examination*

WHEREAS, N.J.S.A. 40A:4-78b has authorized the Local Finance Board to adopt rules that permit municipalities in sound fiscal condition to assume the responsibility, normally granted to the Director of the Division of Local Government Services, of conducting the annual budget examination; and

WHEREAS, N.J.A.C. 5:30-7 was adopted by the Local Finance Board on February 11, 1997; and

WHEREAS, pursuant to N.J.A.C. 5:30-7.2 through 7.5, the Township of Bernards has been declared eligible to participate in the program by the Division of Local Government Services, and the Chief Financial Officer has determined that the local government meets the necessary conditions to participate in the program for the 2019 budget year.

NOW THEREFORE BE IT RESOLVED, by the governing body of the Township of Bernards that in accordance with N.J.A.C. 5:30-7.6a & 7.6b and based upon the Chief Financial Officer's certification, the governing body has found the budget has met the following requirements:

1. That with reference to the following items, the amounts have been calculated pursuant to law and appropriated as such in the budget:
 - a. Payment of interest and debt redemption charges
 - b. Deferred charges and statutory expenditures
 - c. Cash deficit of preceding year
 - d. Reserve for uncollected taxes
 - e. Other reserves and non-disbursement items
 - f. Any inclusions of amounts required for school purposes.
2. That the provision relating to limitation on increases of appropriations pursuant to N.J.S.A. 40A:4-45.2 and appropriations for exceptions to limits on appropriations found at N.J.S.A. 40A:4-45.3 et seq., are fully met (complies with CAP law).
3. That the budget is in such form, arrangement, and content as required by the Local Budget Law and N.J.A.C. 5:30-4 and 5:30-5.
4. That pursuant to the Local Budget Law:
 - a. All estimates of revenue are reasonable, accurate and correctly stated,
 - b. Items of appropriation are properly set forth

- c. In itemization, form, arrangement and content, the budget will permit the exercise of the comptroller function within the municipality.
5. The budget and associated amendments have been introduced and publicly advertised in accordance with the relevant provisions of the Local Budget Law, except that failure to meet the deadlines of N.J.S.A. 40A:4-5 shall not prevent such certification.
6. That all other applicable statutory requirements have been fulfilled.

BE IT FURTHER RESOLVED that a copy of this resolution will be forwarded to the Director of the Division of Local Government Services upon adoption.

Resolution #2019-0212 - Bernards Township is Granting a Hardship Waiver to Ana M. Russo for the Sale of Her Affordable Unit known as 3706 Balsam Way Block 9001 Lot 37.01

WHEREAS, Ana M. Russo, single (the "Homeowner") is the owner of property designated as Lot 37.01 in Block 9001 (*formerly identified as Lot 37.06 in Block 178.03*) on the Tax Map of the Township of Bernards in the County of Somerset, State of New Jersey, commonly known as 3706 Balsam Way (the "Property"), which was purchased pursuant to an Affordable Housing Agreement; and

WHEREAS, the Homeowner requested to sell her 3 bedroom moderate income unit on or about October 10, 2018, authorizing the Administrative Agent for the Township to refer certified income-eligible potential buyers, and set a maximum resale price of \$171,282.00; and

WHEREAS, an owner of a low/moderate income unit may request that the unit be sold to a household whose income exceeds the established income eligibility criteria; and

WHEREAS, the Homeowner has made a good faith effort to sell the unit to a certified household and has entered into contracts to sell the unit to certified households which were subsequently cancelled, creating great financial hardship for the homeowner, and no other certified household has signed a contract to purchase; and

WHEREAS, Andres Lopez and Leidy Restrepo, married have applied to purchase the unit and are over the income limit by \$8,423.00 due to working overtime; and

WHEREAS, the Administrative Agent has recommended that pursuant to N.J.A.C. 5:80-26.14(a) 13 that permits an Administrative Agent to process requests and make determinations on requests by owners of restricted units for hardship waivers and the Hardship Waiver be granted, and the Township Attorney has reviewed the Homeowners request for a Hardship Waiver; and

NOW, THEREFORE, BE IT RESOLVED THAT the Township Committee of Bernards Township, County of Somerset, hereby grants the Hardship Waiver to Ana M. Russo for the sale of her unit known as 3706 Balsam Way; and

NOW, THEREFORE, BE IT FURTHER RESOLVED THAT the Hardship Waiver is granted only to Ana M. Russo and all subsequent owners are subject to all restrictions as described in the Affordable Housing Agreement.

Resolution #2019-0213 - Authorizing Township Amendment to Settlement Agreement with Bernards Plaza Associates, LLC and Court Associates, LLC

WHEREAS, the TOWNSHIP OF BERNARDS, a municipal corporation of the State of New Jersey, County of Somerset, having an address at Town Hall, One Collyer Lane, Basking Ridge, NJ 07920 (hereinafter the "Township"); and BERNARDS PLAZA ASSOCIATES, LLC, a New Jersey limited liability company, having an address at 820 Morris Turnpike, Short Hills, NJ 07078, (hereinafter "Bernards Plaza"); and CROWN COURT ASSOCIATES, LLC, a New Jersey limited liability company, having an address at 820 Morris Turnpike, Short Hills, NJ 07078, (hereinafter "Crown Court"); collectively, the Township, Bernards Plaza and Crown Court shall be referred to as the "Parties," now desire to enter into an Amendment to Settlement Agreement; and

WHEREAS, the parties entered into a Settlement Agreement on March 29, 2018 ("Settlement Agreement") that provided for the development of thirty new affordable housing units at Bernards Plaza, development of four new affordable housing units at Crown Court, and the extensions of the affordability controls for 19 existing units at Crown Court; and

WHEREAS, on May 15, 2018, the Township adopted the Rezoning Ordinances as set forth in the Settlement Agreement and the Crown Court Overlay Zone is now codified at Township Code Section 21-79A.1, et seq., and the **Multifamily Housing Overlay Zone within the B-5 Zone is now codified at Township Code Section 21-10.8.1.f;**

WHEREAS, on March 29, 2019, Bernards Plaza and Crown Court executed an Amendment to the Settlement Agreement to ensure that the affordable housing units satisfy the applicable regulations, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. and the Amendment to Settlement Agreement is on file with the Township Clerk.

NOW, THEREFORE, BE RESOLVED, that the Settlement Agreement is Amended as follows:

1. Section 3.1.4 of the Settlement Agreement shall be deleted and replaced in its entirety as follows: The Parties agree that the affordability controls, including duration, commencement and termination shall be governed by the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq., as may be amended or otherwise provided by subsequent law and/or regulation.
2. Within forty-five days of the effective date of the Amendment to the Settlement Agreement, the Township shall adopt the following amendments to the Rezoning Ordinances governing Bernards Plaza and Crown Court:
 - a. Section 21-79A.6 of the Township Code will be replaced with the following: “The controls on the affordability for 19 existing low-and moderate-income units shall be extended for at least an additional 30 years. Four of the 24 proposed additional dwelling units shall be affordable to low-and moderate-income households for at least 30 years, which shall be established at the time the market-rate units are provided. The affordability controls on both the 19 existing and four additional affordable units, including duration, commencement, and termination, shall be governed by the Uniform Housing Affordability Control, N.J.A.C. 5:80-26.1, et seq., as may be amended or otherwise provided by subsequent law and regulation.”
 - b. Section 21-10.8.1.f7(c) shall have the following language added to the end of the current section, “Thirty (30) of the 198 proposed dwelling units shall be affordable to low-and moderate-income households for at least 30 years, which shall be established at the time the market-rate units are provided. The affordability controls, including duration, commencement, and termination, shall be governed by the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq., as may be amended or otherwise provided by subsequent law and/or regulation, provided that in lieu of 10 percent of the affordable units being affordable to households at 35 percent of median income, 13 percent of the affordable units shall be affordable households at 30 percent of median income.”
3. The provisions of the Settlement Agreement set forth in Articles VI – Mutual Obligations, VIII – Cooperation and Compliance, IX – Notices, and X – Miscellaneous are hereby incorporated into the Amendment and shall apply to the Amendment, in addition to the Settlement Agreement.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Mayor and Township Clerk are authorized to execute the Amendment to Settlement Agreement.

[Resolution #2019-0214 - Approval of Special Event Permit Basking Ridge Indian Community \(BRIC\) – Holi Festival April 27, 2019 – Pleasant Valley Park](#)

WHEREAS, Anita Koppala, representing Basking Ridge Indian Community (BRIC), 17 Honeyman Rd., Basking Ridge, NJ 07920, “the applicant,” has requested a special event permit for their Holi Festival on April 27th, 2019 with the event time being from 10:00AM – 3:30PM; and

WHEREAS, the applicant has satisfied the requirements of the Revised General Ordinances of the Township of Bernards § 4-4. et. seq.; and

WHEREAS, the applicant will hire one off-duty police officer to control traffic; and

WHEREAS, the applicant will reimburse the township for 2 public work employees to be on-site for approximately 4 hours at a cost not to exceed \$450.00 and has submitted a deposit of 50%, or \$225.00, for the cost has been received; and

WHEREAS, the Municipal Clerk, Police Chief, Recreation Director, Health Officer, and Director of Public Works have reviewed the application and find it complete.

NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Bernards that the request be approved as submitted.

[Resolution #2019-0215 - Return of Performance Surety for 340 S Finley Avenue, Block 2801 Lot 23](#)

WHEREAS, the Township Engineer of the Township of Bernards, Somerset County, New Jersey, 07920, has the following Performance Surety:

Name of Applicant: Basking Ridge Animal Hospital
Address: 340 S Finley Avenue
Basking Ridge, NJ 07920
Letter of Credit: IS0282252U
Bank: Wells Fargo Bank, N.A.
Address: 401 Linden Street, 1st Floor
Winston-Salem, NC 27101
Amount: \$221,363.28 Cash Portion: \$24,595.92

WHEREAS, the aforesaid applicant is requesting return of their Performance Surety; and

WHEREAS, the Township Engineer recommends return of the Performance Surety to the applicant; and

WHEREAS, no Maintenance Surety required.

NOW, THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Bernards that the aforesaid Performance Surety be released to the above named applicant.

End Consent Agenda

[03/26/2019 Open Session Minutes](#)

Baldassare recused himself.

Motion by Esposito, second by Harris, and unanimously agreed that the minutes be approved for content and release.

[Resolutions #2019-0197, #2019-0198, #2019-0199 and #2019-0200](#)

Motion by Esposito, second by Harris, and unanimously agreed that the above resolutions be carried to the 04/23/2019 township committee meeting.

[03/26/2019 Executive Session Minutes](#)

Esposito recused himself.

Motion by Baldassare, second by Harris, that the minutes be approved for content only.

Roll Call:

Aye: Baldassare, Esposito, Harris, Bianchi
Nay:
Abstain: Carpenter
Motion carried.

[Ordinance #2414 - An Ordinance Updating and Amending the Specific and General Licensing Regulations of Chapter 4 entitled "General Licensing" of the General Ordinances of the Township of Bernards - Introduction](#)

The deputy clerk read the ordinance by title.

Motion by Baldassare, second by Esposito, that Ordinance #2414 be introduced on first reading, advertised as required by law, and scheduled for a public hearing on 04/23/2019.

Roll Call:

Aye: Baldassare, Carpenter, Esposito, Harris, Bianchi
Nay:

Abstain:
Motion carried.

NOW, THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Bernards in the County of Somerset as follows:

Section 1. Chapter 4 entitled "General Licensing" of the *General and Land Use Ordinances* of the Township of Bernards is hereby supplemented and amended to read as follows: [New language **bold and underlined**, deleted language ~~strikethrough~~.]

SECTION 4-1. General Regulations

Unless otherwise provided, the following regulations shall apply to all licenses, except dog licenses, issued under this revision whether included within this chapter or not.

§ 4-1.1. Applications.

All applications for licenses shall be made to the Municipal Clerk, **unless otherwise specified, using the prescribed form.** ~~and shall contain the following information:~~

- ~~a. Name and permanent and local address of the applicant.~~
- ~~b. If the applicant is a natural person, a complete physical description.~~
- ~~c. If the licensed activity is to be carried on at a fixed location, the address and a full description of the premises.~~
- ~~d. If a vehicle is to be used, its description, including copies of the vehicle registration, insurance, and driver's license of the applicant.~~
- ~~e. If the applicant is employed by another, the name and address of the employer together with credentials therefrom establishing the exact relationship.~~
- ~~f. The length of time for which the right to do business is desired and the days of the week and the hours of the day within which the business will be conducted.~~
- ~~g. A description of the nature of the business and the goods, property or services to be sold, together with the name and address of the source of supply of such goods, property or services, and the method of delivery.~~
- ~~h. A statement as to whether the applicant has been convicted of any crime, offense or violation of any municipal ordinance other than traffic violations, the nature of the offense and the punishment or penalty imposed therefor.~~
- ~~i. Appropriate evidence as to the good character and business responsibility of the applicant such as will enable an investigator to properly evaluate such character and business responsibility.~~
- ~~j. All applicants shall be fingerprinted for proper identification, criminal history searching and application investigation. The applicant will be responsible for the additional administrative costs for such fingerprinting. If the applicant has previously been approved by the Chief of Police within the past two calendar years, in the discretion of the Chief of Police the applicant need not be fingerprinted again. A statement, to be signed by the applicant, consenting to the Township's obtaining copies of the applicant's driving record, criminal record, disorderly persons offense record, ordinance violation records, law enforcement contact and investigative reports from the official public agency which maintains such records to aid in the investigation.~~
- ~~k. Applications of partners and members of limited liability companies shall be signed by all partners and all members of limited liability companies with the foregoing provisions of this subsection answered in detail as to each partner and limited liability company member. Applications of corporations shall have attached thereto individual statements, in accordance with all of the provisions of this subsection, relating to each and every employee, agent or servant who shall engage in any of the functions authorized by this section and signed by each agent, servant or employee, and full compliance herewith by each individual.~~
- ~~l. Such other information as may be required by statute, but whenever any of the foregoing provisions are in conflict with any statutory provisions, the same shall be omitted.~~

§ 4-1.2. Investigation of Applicants.

- ~~a. Each application shall be referred to the Chief of Police or officer in charge of the Police Department, who shall immediately institute such investigation of the applicant's business and moral character and ability to properly conduct the licensed activity as he deems necessary for the protection of the public good. Police shall communicate his findings in writing to the Township Committee within a reasonable time after the complete application has been filed. If, based upon such findings, or upon such other information as the Township~~

~~Committee may request, or that may come to the attention of the Township Committee of a disqualifying event, the Township Committee decides that the applicant's character, ability or business responsibility is unsatisfactory or the products or services are not free from fraud, it shall disapprove the application and refuse to issue the license and shall so notify the applicant. Otherwise, the Municipal Clerk shall issue the license pursuant to a resolution adopted by the Township Committee.~~

~~§ 4-1.3. Notification of disqualifying event; Appeal of Determination.~~

~~If a determination has been made by the Chief of Police that an event in the application investigation constitutes a disqualifying event, then the Chief of Police shall notify the applicant, in writing, of the determination within five days.~~

- ~~a. Once the applicant has been formally notified, in writing, that the Chief of Police has made a determination that any event contained in the application investigation is a disqualifying event, the applicant shall have the right, within 10 days of the date of written notification, to appeal in writing to the Township Committee for review of the determination of the Chief of Police.~~
- ~~b. The applicant shall be entitled to a hearing before the Township Committee and shall be entitled to provide information stating why the event in the application investigation should not be considered a disqualifying event.~~
- ~~c. Once an appeal is made, the Township Committee shall review the file, the circumstances surrounding the application investigation and any statement or information provided by the applicant and shall make a final determination within 21 days of the public hearing as to whether an event on the application investigation constitutes a disqualifying event. The Township Committee may affirm, modify or reverse the decision of the Chief of Police and shall set forth its final determination in a resolution granting, modifying or denying the license.~~

~~Confidentiality. The criminal history record background check and fingerprinting procedure set forth in this chapter will be conducted, to the extent possible, in a manner intended to preserve the privacy of all parties.~~

§ 4-1.2. Criminal Background Checks; Fingerprinting.

Unless otherwise specified for the specific license, whenever an applicant is required to be fingerprinted as part of a criminal background check, all initial applicants shall be fingerprinted for proper identification, criminal history searching and application investigation. The applicant will be responsible for the additional administrative costs for such fingerprinting. All subsequent applications shall require a criminal history name check provided through the New Jersey State Police by the applicant and the applicant need not be fingerprinted again. The Chief of Police may accept the results of a criminal history record background check of State records conducted within the previous six (6) months indicating no disqualifying information which was required for that person to be licensed in another municipality. The applicant shall sign a statement consenting to the Township's obtaining copies of the applicant's driving record, criminal record, disorderly persons offense record, ordinance violation records, law enforcement contact and investigative reports from the official public agency which maintains such records to aid in the investigation. Every applicant who is required to submit to fingerprinting shall pay the administrative cost of taking and processing the applicant's fingerprints, which shall be in addition to the license fees specified for such license.

§ 4-1.34. Issuance.

All licenses shall be issued by the Municipal Clerk, **unless otherwise specified** and shall bear the common seal of the Township attested to by the Clerk.

§ 4-1.45. Transferability.

Every license issued under this chapter shall apply only to the applicant to whom it was issued and the place or premises for which issued and shall not be transferable.

§ 4-1.56. Expiration Date; Renewal.

Except as otherwise stated with respect to licenses for particular activities, all licenses shall expire on December 31 of the year of issue. All licenses shall expire at 12:00 midnight, prevailing time. Applications for renewal of licenses which expire on December 31 shall be made not later than December 1 of the year of issue.

§ 4-1.6. Denial of License; Appeal.

Unless otherwise specified for the specific license, the denial of any license issued under the provisions of this Chapter, may be appealed to the Township Committee pursuant to the following procedures:

- a. **Within ten (10) days of the applicant having been formally notified, in writing, that the license has been denied, the applicant shall have the right to appeal in writing to the Township Committee for review of the denial.**
- b. **The applicant shall be entitled to a hearing before the Township Committee at a public meeting and shall be entitled to provide information stating why the license should not have been denied.**
- c. **Once an appeal is made, the Township Committee shall review the file, the circumstances surrounding the application investigation and any statement or information provided by the applicant and shall make a final determination within twenty one (21) days of the public hearing. The Township Committee may affirm, modify or reverse the denial, and shall set forth its final determination in a resolution granting, modifying or denying the license.**

§ 4-1.7. Revocation of Licenses; Causes.

Any license ~~or permit~~ issued under the provisions of this Chapter ~~or any other Chapter of this revision or any ordinance of the Township of Bernards~~, **where there is no specific provision governing the revocation thereof**, may be revoked by the Township Committee after notice and hearing before the Township Committee for any of the following causes:

- a. Fraud, misrepresentation or false statement contained in any application for permit or license.
- b. Fraud, misrepresentation or false statement in the conduct of any business or activity authorized by such license.
- c. Violation of any provision of this revision.
- d. Conviction of the licensee for any felony or a misdemeanor involving moral turpitude.
- e. Conducting any business or activity licensed under this chapter, through the licensee himself or any of his agents, servants or employees, in any unlawful manner or in such a manner as to constitute a breach of the peace or a menace to the health, safety or general welfare of the public.

Upon reasonable belief that the cause for revocation exists, the Chief of Police temporarily shall suspend a license pending hearing and determination by the Township Committee.

§ 4-1.8. Notice of Hearing.

Notice of a hearing for revocation of a license ~~or permit~~ issued under the provisions of this Chapter shall be given in writing by the Municipal Clerk ~~in accordance with Subsection 4-1.3~~, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed to the licensee, by regular and certified mail, to his/**her** last known address at least five days prior to the date set for the hearing.

§ 4-1.9. Hearing Determination.

At the hearing **to be held at a public meeting of the Township Committee** the licensee shall have the right to appear and be heard, to be represented by counsel, to present witnesses in his own behalf, to cross-examine opposing witnesses and to have a permanent record made of the proceedings. The Township Committee shall revoke or suspend the license only if it is satisfied by a preponderance of the evidence that the licensee is guilty of the acts charged.

§ 4-1.10. Reinstatement of Revoked Licenses.

No applicant whose license has been revoked or denied as provided by this section, nor any person acting for the applicant directly or indirectly, shall be entitled to another license to carry on the same activity unless he shall establish to the Township Committee by clear and convincing evidence that the acts which led to the revocation or denial will not be committed or occur again.

§ 4-1.11. Violations of General Licensing Chapter.

Any person found guilty of violating this Chapter IV, General Licensing, shall be subject to a fine in accordance with Section 3-1 of the Revised General Ordinances of Bernards Township. Such penalty shall be in addition to any denial, suspension or revocation of license as may be provided under specific sections of this chapter.

SECTION 4-2. Sales of Goods and Services

§ 4-2.1. Scope of Regulations.

It is the intent of this section to require the licensing of any person who shall sell or solicit for the sale of goods or services within the Township from one or more temporary locations in zone districts which permit retail sales as a permitted use, or where otherwise permitted by law or variance, or by going from door to door or place to place. Sales or solicitations from temporary locations are prohibited in zone districts which do not permit retail sales as a permitted use, unless such sales are expressly permitted by some other law or variance. As used in this section, "temporary locations" shall not include on-street parking of a vehicle, with or without the engine running, except for ice cream vendors.

4-2.2 Application

- a. **Name and permanent and local address of the applicant.**
- b. **If the applicant is a natural person, a passport style photograph.**
- c. **If the licensed activity is to be carried on at a fixed location, the address and a full description of the premises.**
- d. **If a vehicle is to be used, its description, including copies of the vehicle registration, insurance, and driver's license of the applicant.**
- e. **If the applicant is employed by another, the name and address of the employer together with credentials therefrom establishing the exact relationship.**
- f. **The length of time for which the right to do business is desired and the days of the week and the hours of the day within which the business will be conducted.**
- g. **A description of the nature of the business and the goods, property or services to be sold, together with the name and address of the source of supply of such goods, property or services, and the method of delivery.**
- h. **A statement as to whether the applicant has been convicted of any crime, offense or violation of any municipal ordinance enumerated in § 4-2.3.**
- i. **All applicants shall be subject to a criminal history name check provided through the New Jersey State Police in connection with the criminal background check for the application. The police may require the applicant to be fingerprinted if the identity of the applicant is unable to be confirmed or matched to a name check. If fingerprinting is required, the applicant will be responsible for the additional administrative costs for such fingerprinting. The Chief of Police shall accept, for the purposes of licensing a person as a canvasser, peddler, or solicitor, the results of a criminal history record background check of State records conducted within the previous six (6) months indicating no disqualifying information which was required for that person to be licensed in another municipality as a canvasser, peddler, or solicitor; which is authorized by Somerset County Prosecutor's Office, County General Order, Volume 9, Chapter 4, dated February 7, 2019, and N.J.S.A. 53:1-20.38. A statement, to be signed by the applicant, consenting to the Township's obtaining copies of the applicant's driving record, criminal record, disorderly persons offense record, ordinance violation records, law enforcement contact and investigative reports from the official public agency which maintains such records to aid in the investigation.**
- j. **Applications of partners and members of limited-liability companies shall be signed by all partners and all members of limited-liability companies with the foregoing provisions of this subsection answered in detail as to each partner and limited-liability company member. Applications of corporations shall have attached thereto individual statements, in accordance with all of the provisions of this subsection, relating to each and every employee, agent or servant who shall engage in any of the functions authorized by this section and signed by each agent, servant or employee, and full compliance herewith by each individual.**
- k. **Such other information as may be required by statute, but whenever any of the foregoing provisions are in conflict with any statutory provisions, the same shall be omitted.**

§ 4-2.3. Investigation of Applicants.

- a. **Each application shall be referred to the Chief of Police who shall immediately institute such investigation of the applicant's business and moral character and ability to properly conduct the licensed activity as he**

deems necessary for the protection of the public good. The following criteria shall be applied when determining eligibility for license issuance:

1. An applicant may be denied if they have been convicted within the last 7 years of any indictable crime in New Jersey or in any other state or jurisdiction, for conduct which, if committed in New Jersey, would constitute an indictable crime.
 2. An applicant may be denied if they have been convicted within the last 7 years of any disorderly persons offense, petty disorderly persons offense, or ordinance violation involving dishonesty, burglary, theft, receiving stolen property, or any other offense of similar nature in New Jersey or in any other state or jurisdiction, for conduct which, if committed in New Jersey, would constitute a similar offense.
 3. An applicant may be denied for a conviction of any indictable crime in New Jersey involving danger to the person pursuant to N.J.S.A. 2C:11-1 et seq., N.J.S.A. 2C:24-1 et seq., N.J.S.A. 2C:14-1 et seq. or N.J.S.A. 2C:15-1 et seq., or against the family, children or incompetents, pursuant to N.J.S.A. 2C:24-1 et seq.; or in any other state or jurisdiction, for conduct which, if committed in New Jersey, would constitute any of the crimes or offenses listed in this paragraph.
 4. An applicant may be denied for any conviction of an indictable crime pursuant to N.J.S.A. 2C:12-1 et seq. or N.J.S.A. 2C:13-1 et seq.; or in any other state or jurisdiction, for conduct which, if committed in New Jersey, would constitute any indictable crime listed in this paragraph.
 5. An applicant may be denied for any arrest where charges have not been adjudicated involving a violation of a crime or offense involving those listed in paragraph b, c or d, where after a review of the official record and reports of the incident(s), it is reasonably believed that the applicant most likely committed the offense and would be found guilty in a judicial proceeding.
 6. An applicant may be denied when there is an apparent pattern of arrests for charges listed in paragraphs b, c, and d without convictions, where after a review of the official records and reports of the incident(s), it is reasonably believed that the applicant most likely continually commits these offenses.
- b. The Chief of Police shall communicate his findings in writing to the Township Committee within a reasonable time after the complete application has been filed. If, based upon such findings, or upon such other information as the Township Committee may request, or that may come to the attention of the Township Committee of a disqualifying event, the Township Committee decides that the applicant's character, ability or business responsibility is unsatisfactory or the products or services are not free from fraud, it shall disapprove the application and refuse to issue the license and shall so notify the applicant.

§ 4-2.4. Notification of disqualifying event; Appeal of Determination.

If a determination has been made by the Chief of Police that an event in the application investigation constitutes a disqualifying event, then the Chief of Police shall notify the applicant, in writing, of the determination within five days.

- a. Within ten (10) days of the applicant having been formally notified, in writing, that the Chief of Police has made a determination that any event contained in the application investigation is a disqualifying event, the applicant shall have the right to appeal in writing to the Township Committee for review of the determination of the Chief of Police.
- b. The applicant shall be entitled to a hearing before the Township Committee and shall be entitled to provide information stating why the event in the application investigation should not be considered a disqualifying event.
- c. Once an appeal is made, the Township Committee shall review the file, the circumstances surrounding the application investigation and any statement or information provided by the applicant and shall make a final determination within 21 days of the public hearing as to whether an event on the application investigation constitutes a disqualifying event. The Township Committee may affirm, modify or reverse the decision of the Chief of Police and shall set forth its final determination in a resolution granting, modifying or denying the license.

Confidentiality. The criminal history record background check and fingerprinting procedure set forth in this chapter will be conducted, to the extent possible, in a manner intended to preserve the privacy of all parties.

§ 4-2.52.Exceptions.

The terms of this section shall not apply to any of the following:

- a. Any person duly licensed by the Commissioner of Banking and Insurance or the Real Estate Commission of the State of New Jersey.
- b. The acts of persons selling personal property at wholesale to dealers in such articles.
- c. Any sale required by statute or by order of any court.
- d. Any person engaged in delivering merchandise or other things in the regular course of business to the premises of the person ordering or entitled to receive the same.
- e. Any veteran who holds a special state license issued under the laws of the State of New Jersey shall be exempt from securing a license as provided herein for peddling but shall be required to comply with all other applicable subsections of this section and shall be required to obtain a special veteran's permit which shall be issued by the Township Clerk, upon proper identification.
- f. Any person soliciting for a charitable cause or to discuss with such occupant issues of public or religious interest.
- g. Garage sales conducted by homeowners at their place of residence, subject to the following conditions and limitations:
 1. Garage sales may be conducted only during daylight hours.
 2. No more than two garage sales per year may be conducted on the same residential property.
 3. A garage sale may not exceed 72 hours in duration.
 4. The use of motor vehicles for the storage or display of merchandise being sold at the garage sale is prohibited.
 5. Garage sales shall not include the sale by a homeowner of goods acquired by the homeowner solely with a view toward resale or goods not normally associated with the ownership and use of residential property.
 6. Garage sales which do not meet the requirements of Subparagraph g1 through g5 are prohibited.
- h. Any person who, before arriving at a residence in order to sell or solicit for the sale of goods or services, had been invited by one or more of the residents to come to the residence for that purpose; provided, however, that an invitation which is first extended only after the solicitor has knocked on the door, rung the doorbell or otherwise announced his or her presence at the residence does not satisfy the requirement for an invitation under this exception.
- i. Any person who is a bona fide, full-time student in grade 12 or lower, who is selling goods or services in conjunction with a school-related or other organized recreational, cultural or educational activity program.
- j. Any person who has been authorized to solicit as part of a solicitation or event which is sponsored by any governmental body, department or agency, the jurisdiction of which is entirely within the borders of the Township.
- k. Any person who is soliciting in connection with a special event sponsored by a bona fide civic organization.

§ 4-2.63.License Required.

No person shall sell or dispose of, offer to sell or dispose of, or solicit for any wares, goods, merchandise or services within the Township from a temporary location or by going from door to door or place to place without first having obtained a license and paid the license fee. In addition to the requirements set forth in Subsection ~~4-2.2 4-11~~, all applicants must provide ~~one three~~ passport-size photos; and vendors of tangible personal property, other than property exempted from sales and use taxation pursuant to N.J.S.A. 54:32B-8.2 or any amendments thereto, having no fixed place of business in the Township, must submit a copy of a valid certificate of authority issued to the vendor pursuant to N.J.S.A. 54:32B-15 or any amendment thereto, empowering the vendor to collect sales tax.

§ 4-2.63.1. Expiration Date; Renewal.

Licenses issued pursuant to Section 4-2, Sales of Goods and Services, **except as otherwise stated with respect to licenses for activities, all licenses shall expire at 12:00 midnight, prevailing time, on December 31 of the year of issue. Applications for renewal of licenses which expire on December 31 shall be made not later than December 1 of the year of issue.** ~~shall be valid for no longer than six months. Such licenses issued for any period commencing between January 1 and June 30 shall expire on June 30 of the year in which they are valid. Such licenses issued for any period commencing between July 1 and December 31 shall expire on December 31 of the year in which they are valid. Applications for renewal of licenses shall be made not later than June 1 if the expiration date is June 30 or December 1 if the expiration date is December 31.~~

§ 4-2.73.2. Zoning Approval.

No license granted under this chapter, nor any exemption from the requirements of this chapter, shall relieve any person of the standards and requirements of Chapter XXI, Land Development, to the extent that they may apply. No approval or variance granted pursuant to said Chapter XXI shall relieve any person of the provisions of this chapter.

§ 4-2.83.3. Health Approval.

No license granted under this chapter, nor any exemption from the requirements of this chapter, shall relieve any person of the standards and requirements of Chapter BH-2. Before a licensee shall use a vehicle or mode of transportation in furtherance of his permitted business to sell food, produce or ice cream, he shall submit the vehicle to the Township Health Officer for inspection and approval relative to compliance with this section and shall, whenever requested during the term of the license, submit the vehicle for reasonable reinspections for that purpose. No vehicle or mode of transportation shall be used by any licensee unless it has been approved for use by the Health Officer, and written approval shall remain in and upon the vehicle at all times and shall be shown by the operator thereof to any member of the Police Department, any Township official or any member of the public who may request to be shown the same.

§ 4-2.94. License Fee.

The fee for a license to sell or solicit goods or services shall be \$100 ~~for the first six month period per application. The fee for a renewal license in immediately following, sequential six month periods shall be \$50.~~

§ 4-2.105. Display of License.

Licensees under this section shall display their license during any solicitation. Licensees shall likewise exhibit their license upon the request of a member of the Police Department or any citizen.

§ 4-2.116. Hours of Sale.

- a. No person subject to the provisions of this section shall sell or attempt to sell in accordance with the terms of this section, before 10:00 a.m. and not after 8:00 p.m., Monday through Saturday, except where expressly invited in the homes of the occupants thereof, ~~and except as further provided in Subsection 4-2.9b.~~
- b. Persons who sell or attempt to sell ready-to-eat food products shall be permitted to operate Monday through Sunday between the hours of 8:00 a.m. and 9:00 p.m., subject to all other restrictions. This subsection shall be strictly construed.

§ 4-2.127. Sale of Food and Produce.

- a. All licensees who shall offer to sell, display for sale, or sell or deliver fruits, vegetables and farm products from any vehicles which are wholly or in part open on any of the sides thereof shall, at all times, keep all fruits, vegetables and produce of any kind and nature completely screened and covered with satisfactory materials in order to avoid and eliminate the accumulation of flies or any other insects from alighting around or upon any and all merchandise.
- b. All licensees offering for sale, displaying for sale, selling or delivering seafood, meats, poultry or dairy products shall transport the same solely in refrigerated vehicles, and all such products shall remain in the refrigerated portion of the vehicle at all times up to the time of sale or delivery. The refrigerated portion, during the use thereof, shall be maintained at a properly low temperature to completely safeguard all products from a health and sanitary standpoint to the fullest reasonable extent possible for the safety and welfare of the public.
- c. No licensee shall at any time permit any waste materials or parts of produce or any other merchandise to remain in or upon any street, roadway, curbs or walks and shall at all times remove any such debris that may have fallen from his vehicle so that the same is immediately placed in metal containers as provided for in Subsection **4-2.14a** ~~4-2.9a.~~
- d. All sales of merchandise by any licensee shall, at the time of sale, be placed in bags or other like, suitable containers when the same shall be handed to customers of the licensee.

§ 4-2.127.1. Sale of Ice Cream.

An "ice cream vendor" is defined as a person who goes from place to place or from house to house, travels on the public streets by vehicle and carries with him ice cream, ice cream products, water ices or frozen confectionery products of any kind or character (collectively "ice cream") for the purpose of selling or offering to sell them to customers from the vehicle.

- a. A licensee engaged as an ice cream vendor may sell ice cream from one or more temporary locations from vehicles in residential zone districts and districts which permit retail sales as a permitted use and at Township parks and athletic fields, as referenced in Table A.

Table A

Name of Park/Field	Vendor Location
Southard Park	Baseball and Soccer Field
Pleasant Valley Park	Soccer Field 1, 2, 3, 4; Softball Field 1, 2, 3; Baseball Field 1
Dunham Park	Soccer Field; Roller Hockey Court; Baseball Field
Rebel Hill Park	Baseball Field; Soccer Field
War Memorial Fields	Soccer; Baseball, Softball
Astor Fields	Soccer/Lacrosse Fields
Farmstead Park	Soccer/Lacrosse Field

- b. No ice cream vendor shall park any vehicle within the lines of any public street, road or other public place for the purpose of selling ice cream for a period longer than 15 minutes, and then only while making actual sales. No licensee shall sell or attempt to sell any article to pedestrian or vehicular traffic other than when his vehicle shall be properly parked immediately adjacent to the curb of a public street in a permitted locality. No licensee shall at any time double park when dealing with any of his trade, and in no event shall transact any of his business operations other than on the curb side of his vehicle. Sales of ice cream at Township parks and athletic fields will be allowed only during the established park hours of operation. Vehicles shall be parked adjacent to the right-hand curbline to ensure the safety of customers. Vehicles may park only within parking lots of the parks and athletic fields and shall not park on any park road for the sale of items to the public. No vehicle used for selling ice cream shall be parked within 500 feet of any school or school property 1/2 hour before the opening of school or 1/2 hour after the close of school, nor shall any such vehicle be parked within 500 feet of any public place of amusement or assemblage during the hours such place is open for attendance, or any public park.
- c. No ice cream vendor shall deposit or leave any paper wrappings, refuse or other materials upon any street, sidewalk or public place. Each vehicle used for the sale of ice cream shall be equipped with a metal waste container having a self-closing lid, into which paper wrappings, refuse or other materials shall be deposited.
- d. Ice cream shall be sold or offered for sale only in sealed containers, and the filling of individual containers with ice cream in or from any vehicle from the street, highway or any other public place is prohibited.

§ 4-2.13~~8~~. Conduct of Licensees.

Every person to whom a license is issued under the terms of this section shall be governed by the following rules and regulations:

- a. No person shall enter or attempt to enter the house of any resident in the Township without an express invitation from the occupant of the house.
- b. No person shall conduct himself in such a manner as to become objectionable to or annoy an occupant of any house.
- c. All licensees and their respective vehicles or modes of transportation used in carrying on their permitted business shall at all times fully comply with all the terms, covenants and conditions of this section and all other applicable municipal ordinances and state laws, regulations or provisions pertaining thereto, particularly, but not in limitation thereof, that may deal with provisions of health, safety and general welfare.
- d. Except for an ice cream vendor as defined in Subsection ~~4-2.12.1~~ ~~4-2.7.1~~, any person who sells or offers for sale any goods or services from any temporary location in the Township which is not zoned to permit retail sales as a permitted use shall be guilty of a violation of this section, unless such sales are expressly permitted by some other section of the Revised General Ordinances.

§ 4-2.149. Use of Vehicles.

- a. No licensee shall at any time permit any debris, waste material, rotting produce or merchandise of any kind or any unfit produce to remain in or upon his vehicle, unless the same is contained in a leakproof metal container having a properly fitted metal cover.
- b. (Reserved)
- c. (Reserved)
- d. Notwithstanding the foregoing, with the exception of the sale of food intended for immediate consumption in zone districts which permit retail sales as a permitted use and the sale of ice cream in residential zones and zone districts which permit retail sales as permitted uses, the sale of goods from temporary locations, by use of trucks parked on site for storage, display or vending of the goods intended for sale, is prohibited. The sale of food from catering trucks for immediate consumption in zone districts which permit retail sales as a permitted use and at construction sites in residential zones only during the construction process is permitted.

§ 4-2.1540. Outdoor Storage.

- a. In nonresidential zones, no person shall store or display outside the confines of a building any article or material being offered for sale unless the same is in conformance with the standards governing outdoor storage in Chapter XXI, Land Development, of the Revised General Ordinances.
- b. Except as permitted by Section ~~4-2.5g~~ ~~4-2.2g~~ hereof concerning garage sales conducted by homeowners at their place of residence, or as otherwise expressly permitted by the Revised General Ordinances, no person shall, in any residential zone, store or display outside the confines of a building any articles, materials or merchandise which is being offered for sale.
- c. As used in this Section ~~4-2.15~~ ~~4-2.10~~, "store" is not limited to long-term storage of the items in question but shall include any retention of such items if such retention is for the purpose of having the items available for sale.

§ 4-2.1644. Solicitations on Municipal Property.

Except as otherwise permitted by law, no person shall sell or offer for sale any goods or services in any municipal park, building or other municipally owned property. This section shall not apply to:

- a. Ice Cream vendors permitted in municipal parks and athletic fields pursuant to Subsection ~~4-2.12.1~~ ~~4-2.74~~, Table A.
- b. Such concessions as may be established and operated by or on behalf of the Township, the Township Pool Commission or any other Township-related entity and operated by either the Township, such commission or entity or a contractor retained pursuant to applicable contracting laws.
- c. Private parties being conducted pursuant to permits for the use of Township facilities in any park.
- d. Licensed vendors at a fair, carnival or similar event being conducted pursuant to permits for the use of any portion of or facilities in any municipally owned property.

§ 4-2.17.Revocation of Licenses; Causes.

Any license or permit issued under the provisions of this chapter or any other chapter of this revision or any ordinance of the Township of Bernards may be revoked by the Township Committee after notice and hearing before the Township Committee for any of the following causes:

- a. **Fraud, misrepresentation or false statement contained in any application for permit or license.**
- b. **Fraud, misrepresentation or false statement in the conduct of any business or activity authorized by such license.**
- c. **Violation of any provision of this revision.**
- d. **Conviction of the licensee for any felony or a misdemeanor involving moral turpitude.**
- e. **Conducting any business or activity licensed under this chapter, through the licensee himself or any of his agents, servants or employees, in any unlawful manner or in such a manner as to constitute a breach of the peace or a menace to the health, safety or general welfare of the public.**

Upon reasonable belief that the cause for revocation exists, the Chief of Police temporarily shall suspend a license pending hearing and determination by the Township Committee.

§ 4-2.18. Notice of Hearing.

Notice of a hearing for revocation of a license or permit issued under the provisions of this chapter shall be given in writing by the Municipal Clerk in accordance with Subsection 4-1.3, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed to the licensee, by regular and certified mail, to his last known address at least five days prior to the date set for the hearing.

§ 4-2.19. Hearing Determination.

At the hearing the licensee shall have the right to appear and be heard, to be represented by counsel, to present witnesses in his own behalf, to cross-examine opposing witnesses and to have a permanent record made of the proceedings. The Township Committee shall revoke or suspend the license only if it is satisfied by a preponderance of the evidence that the licensee is guilty of the acts charged.

§ 4-2.20. Reinstatement of Revoked Licenses.

No applicant whose license has been revoked or denied as provided by this section, nor any person acting for the applicant directly or indirectly, shall be entitled to another license to carry on the same activity unless he shall establish to the Township Committee by clear and convincing evidence that the acts which led to the revocation or denial will not be committed or occur again.

§ 4-2.12 (Reserved)

§ 4-2.21-3 Severability.

If any provision of this section is found to be invalid or unenforceable, it shall not affect the validity or enforceability of the remainder of this section, and provided that, if any exception under Subsection ~~4.2.5~~ ~~4-2.2~~ is found to be invalid or unenforceable, the exception in question shall be eliminated and not broadened.

SECTION 4-3. (Reserved)

§ 4-3.1 through § 4-3.5. (Reserved)

SECTION 4-4. Shows, Public Exhibitions, Special Events, Amusement Devices and Fireworks

§ 4-4.1. Definitions.

As used in this section, the following words shall have the meanings given:

AMUSEMENT DEVICE

Shall mean any mechanical device used for entertainment, including but not limited to merry-go-rounds, Ferris wheels and the like, as well as inflatable devices, including but not limited to the moonwalk and the like.

SHOW, SPECIAL EVENT OR PUBLIC EXHIBITION

Shall mean:

- a. Any kind of affair which is:
 1. Open to the general public, and
 2. Generates a parking or traffic flow situation that could unreasonably interfere with the movement of normal traffic or emergency vehicles or other organized groups having a similar common purpose or goal proceeding in or upon any street, park or other public place in Bernards Township, and
 3. Requires the expenditure of municipal resources or inspections from the Fire Prevention Office, Construction Office, Department of Public Works, Police Department, Health Department, or Recreation Department, including but not limited to a television or movie filming, bicycle race, bikeathon, car show, carnival or circus, ceremony, concert, fair, farmer's market, festival, fireworks display, flea market, foot race, marathon or run, parade, or walkathon.
- b. Those events proposed to take place at a municipal park or facility, whether the event is open to the general public

or not, shall be considered a show, special event or public exhibition only if the anticipated capacity of the event exceeds the number of persons permitted at the facility as prescribed by annual resolution of the Township Committee.

- c. Shows, special events and public exhibitions shall be prohibited at municipal facilities which are not included in this resolution adopted by the Township Committee.

§ 4-4.2. License Required.

No person shall conduct a show, special event or public exhibition or operate any amusement device without having first obtained a special event license, approved by resolution of the Township Committee, and paid the required license fee.

§ 4-4.3. Exceptions.

The terms of this section shall not apply to any of the following:

- a. Funeral and wedding processions.
- b. Events where students are participating in educational, or athletic/sport competition on Board of Education or private educational facility property under the authorization of the proper school authorities.

§ 4-4.4. Application.

- a. An application and fee must be submitted to the Municipal Clerk at least 60 days prior to the event. Failure to submit the application at least 60 days prior to the event may constitute cause for denial of the event. Applications shall be made in writing on the prescribed form and include all checklist items.
- b. In addition to the application described herein, the applicant is also responsible for obtaining all other applicable permits, including, but not limited to:
 - 1. Construction Code permits: tents, generators, mechanical equipment and platforms.
 - 2. Health Department permits: food concessions, and animals.
 - 3. Municipal Clerk permits: alcoholic beverage, solicitor and games of chance.
 - 4. Fire prevention permits: air-filled amusements, fireworks/pyrotechnics, any open-flame activity and rides.
 - 5. Zoning permits: temporary signs.
- c. Incomplete applications for shows, public exhibitions, special events and amusement devices, and fireworks, including failure to provide all required documentation, will result in the application being deemed incomplete and returned to the applicant.

§ 4-4.5. Inspection.

In investigating each application for a license under this section, the Chief of Police, Health Officer, Township Risk Manager, Director of Recreation, Fire Prevention Officer and the Construction Official, as applicable, shall review the license application. They shall inspect the premises upon which the licensed activity is to be conducted and all equipment to be used in connection with that activity to determine if the same is in a safe condition. They shall make a written recommendation to the Municipal Clerk as to whether the application can be approved consistent with public health, safety and welfare, and if so, whether any special conditions should be imposed.

§ 4-4.6. Insurance and Indemnification Requirements.

- a. A certificate of insurance is required and must specifically name the Township of Bernards as an additional insured **on General Liability coverage, on a Primary & Non-Contributory basis, and shall confirm that the coverage afforded includes a Waiver of Subrogation in favor of the Township. Insurance is to be placed with an insurance company admitted to conduct business in the State of New Jersey and rated A III or better by A.M. Best.** General liability coverage for property damage or bodily injury must be evidenced on said certificate with minimum limits of liability of not less than:
 - 1. One million dollars general liability each occurrence; or
 - 2. Three million dollars liquor liability each occurrence, if the applicant is in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages; or
 - 3. Three million dollars host liquor liability each occurrence if liquor will be present and the applicant is not in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. ~~Insurance is~~

~~to be placed with an insurance company admitted to conduct business in the State of New Jersey and rated A-III or better by A.M. Best.~~

- b. The applicant shall agree to indemnify, defend and hold harmless the Township, its agents, servants, representatives and employees from and against all losses, damages, claims, liabilities and causes of action of every kind, or character and nature, as well as costs and fees, including reasonable attorneys' fees connected therewith, and the expense of investigation thereof, based upon or arising out of damages or injuries to third persons or their property caused by the acts, omissions or negligence of the applicant, anyone for whose acts the applicant may be liable, or any claims arising out of or in any manner relating to the activities permitted pursuant to this chapter to the extent permitted by law. The applicant shall give the Township prompt and reasonable notice of any such claims or actions.
- c. Any applicant that is **included for General Liability coverage in the same Joint Insurance Fund as the Township** insured by the Suburban Municipal Joint Insurance Fund shall be exempt from the requirements listed in Subsection 4-4.6a1, 2 and 3 above. ~~If any organization other than the applicant will be using Township property in connection with participation in a particular event and no separate application is submitted by that organization, the organization must comply with the requirements listed in Subsection 4-4.6a1 and 2 above. If the additional organization(s) is also insured by the Suburban Municipal Joint Insurance Fund, then that organization shall also be exempt from the requirements listed in Subsection 4-4.6a1 and 2 above.~~
- d. If the show, special event, public exhibition, amusement device or fireworks will take place in or on municipal property, premises, and/or facilities, then an executed hold-harmless agreement in favor of the municipality must be signed by the prospective licensee, ~~as well as by all vendors and organizations participating in the event. Such vendors will also be required to meet the insurance obligations under Subsection 4-4.6a1, 2 and 3.~~
- e. With respect to amusement rides and/or fireworks on municipal property, premises and/or facilities, the amusement ride contractor and/or the fireworks contractor must also sign a hold-harmless agreement in favor of the municipality and provide evidence of any and all insurances as recommended by the Risk Manager.

§ 4-4.7. Notification.

If a public street is to be closed pursuant to a license issued under this section, the applicant shall be personally responsible to deliver a written notice of the closing to each resident located along the portion of the street to be closed. Such notice shall state the date and hours when the street is to be closed, identify the portion of the street which is to be closed, and include the following language: "During the hours of the street closing, no motor vehicles may be operated on the street, except for an emergency. You may wish to park your vehicle outside the closed area before the closing takes effect." Such notices shall either be mailed at least 10 days before the closing or delivered by and at least seven days before the closing. Notices may be left at the premises in a place reasonably calculated to enable the occupant to find them but shall not be hung on an exterior doorknob or otherwise left in a place readily visible to passersby.

§ 4-4.8. License Fees.

The fees for licenses issued under this section shall be as follows:

- a. For-profit organizations or private individuals.
 - 1. All shows, special events and exhibitions and amusement rides: \$500 per day.
- b. Not-for-profit organizations.
 - 1. All shows, special events, and amusement rides and exhibitions: \$50 per day.

§ 4-4.9. License Fees Exceptions.

Events sponsored by the Township of Bernards, the Bernards Township Board of Education; and the Fire and Rescue Services of the Township of Bernards shall be exempt from license fees under this section.

§ 4-4.10. Late Fee.

All applications submitted less than 60 days prior to an event will be assessed a late fee of \$100.

§ 4-4.11. Acceptance of Terms, Conditions and Estimated Costs and Deposit of Escrow by Applicant Prior to Issuance of License.

- a. In addition to the license fee, the applicant shall be responsible to reimburse the Township for the cost of support

staff used in conjunction with the event. These costs may include but not be limited to Police, Public Works, Recreation and Grounds Maintenance.

- b. Prior to issuance of the license, the applicant shall be provided with a cost estimate of these expenses prepared by the Township Administrator, and a list of conditions recommended by the Chief of Police, Health Officer, Township Risk Manager, Director of Recreation, Fire Prevention Officer and Construction Official. The applicant shall confirm in writing his or her acceptance of these estimated costs and conditions.
- c. The applicant shall be responsible to deposit into an escrow account, payment of these costs, or a reasonable estimate thereof, at the time the completed application is approved by the Township Committee.

§ 4-4.11.1. Standards Issuance of Permit.

The standards for the issuance of a permit pursuant to this chapter shall include the following findings:

- a. That the proposed event or amusement device will not unreasonably interfere with or detract from the general public enjoyment and use of the public property to be utilized.
- b. That the proposed activity and use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety, and scheduled recreation activity.
- c. That the proposed activity or uses that are reasonably anticipated will not be likely to include violence, crime, or disorderly conduct.

§ 4-4.12. Date of Event Not Confirmed Until Township Committee Resolution Adopted.

The date of the event shall be confirmed only upon passage of a resolution by the Township Committee.

SECTION 4-5. (Reserved)

~~§ 4 5.1 through § 4 5.6. (Reserved)~~

SECTION 4-6. (Reserved)

~~§ 4 6.1 through § 4 6.7. (Reserved)~~

SECTION 4-7 Municipal Police Rotation Towing Services; Nonconsensual Towing Regulations

§ 4-7.1. Definitions.

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

BASIC TOWING SERVICE

"Basic tow" means private property towing and other nonconsensual towing as defined in this section and other ancillary services that include the following: arriving at the site from which a motor vehicle will be towed; 15 minutes' waiting time; hooking a motor vehicle to or loading a motor vehicle onto a tow truck; transporting a motor vehicle to a storage facility; unhooking or unloading a motor vehicle from the tow truck; and situating the motor vehicle in the space in which it will be stored. "Basic tow" also includes issuing documents for the release of a motor vehicle to its owner or other person authorized to take the motor vehicle; issuing an itemized bill; three trips to the motor vehicle in storage, which, if applicable, include making a vehicle available to an insurance appraiser or adjuster; issuing documents for the release of a motor vehicle to its owner or other person authorized to take the motor vehicle; and retrieving a motor vehicle from storage during the hours in which the storage facility is open.

BUSINESS OFFICE

The business office of the towing operator where the towing operator shall conduct business associated with the towing and storage of vehicles.

CHIEF OF POLICE

The Chief of the Bernards Township Police Department or his/her designee.

DECOUPLING

Releasing a motor vehicle to its owner or operator when the motor vehicle has been, or is about to be, hooked to or

lifted by a tow truck, but prior to the motor vehicle actually having been moved or removed from the property.

MOTOR VEHICLE

Includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles, motorized scooters, motorized wheelchairs and motorized skateboards.

NONCONSENSUAL TOWING

The towing of a motor vehicle without the consent of the owner or operator of the vehicle. "Nonconsensual towing" includes towing a motor vehicle when law enforcement orders the vehicle to be towed whether or not the owner or operator consents.

PERSON

An individual, a sole proprietorship, partnership, corporation, limited liability company or any other business entity.

PRIVATE PROPERTY OWNER

The owner or lessee of private property, or an agent of such owner or lessee, but shall not include a private property towing company acting as an agent of such owner or lessee.

PRIVATE PROPERTY TOWING

The nonconsensual towing by a motor vehicle from private property or from a storage facility of a consumer's motor vehicle that is parked illegally, parked during a time at which such parking is not permitted, or otherwise parked without authorization, or the immobilization of or preparation for moving or removing of such motor vehicle, for which a service charge is made, either directly or indirectly. This term shall not include the towing of a motor vehicle that has been abandoned on private property in violation of N.J.S.A. 39:4-56.5, provided that the abandoned vehicle is reported to the appropriate law enforcement agency prior to removal and the vehicle is removed in accordance with N.J.S.A. 39:4-56.6.

RECOVERY; EXTRAORDINARY TOWING SERVICE

The removal and transportation of a motor vehicle with a registered weight rating over 10,000 pounds from a highway, street or other public or private property. Extraordinary towing service shall also include the recovery of vehicles with a registered weight rating of 10,000 pounds or less that require exceptional methods to retrieve and/or tow the vehicle. "Exceptional methods" are tasks outside the routine scope of vehicle recovery, including but not limited to up-righting an overturned vehicle, and winching a vehicle from a location off the roadway.

SECURE STORAGE FACILITY

A storage facility that is either completely indoors or is surrounded by a fence, wall or other physical barrier that is at least six feet high and is lighted from dusk to dawn.

STORAGE FACILITY

A space at which motor vehicles that have been towed are stored by the towing operator.

TOWING

The moving or removing from public or private property or from a storage facility by a motor vehicle of a consumer's motor vehicle that is damaged as a result of an accident or is otherwise disabled, is recovered after being stolen, or is parked illegally or otherwise without authorization, parked during a time at which such parking is not permitted or otherwise parked without authorization, or the immobilization of or preparation for moving or removing of such motor vehicle, for which a service charge is made, either directly or indirectly. Dues or other charges of clubs or associations which provide towing services to club or association members shall not be considered a service charge for purposes of this definition.

TOWING LIST

The list maintained by the Bernards Township Police Department containing the names of those active towing operators who are licensed with the Township to provide municipal towing services for the Township.

TOWING OPERATOR

Any person in the business of or offering the services of a towing service whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a motor vehicle adapted to and designated for that purpose.

TOWNSHIP

The Township of Bernards, Somerset County, New Jersey.

VEHICLE

Any device in, upon or by which a person or property is or may be transported upon a highway.

YARD FEE

Any fee charges to move a stored vehicle within the tow yard. The vehicle shall be stored in a manner to facilitate access and removal from the tow yard. Yard fees are unauthorized under this section.

§ 4-7.2. Purpose.

It is the purpose of this section to regulate towing operations within the Township.

§ 4-7.3. Licenses.

- a. A towing operator desiring to provide towing services within the Township must obtain a license from the Township for such services.
- b. A license shall be issued for a period of three years.
- c. The Township Committee shall have the sole discretion to deny a license to any towing operator failing to file the requisite application or to meet the requirements of this section based upon the recommendation of the Chief of Police.
- d. Licenses may be awarded by the Township at any time. The license shall not be exclusive, with the Township being able to award licenses to multiple towing operators at any time.

§ 4-7.4. Fees.

The following fees for a towing application shall apply:

- a. Rotational: \$500.
- b. Nonconsensual: \$500.
- c. Rotation/nonconsensual combination: \$750.

§ 4-7.5. Application for License.

- a. Towing operators must file an application with the Municipal Clerk to obtain or renew a towing license within the Township.
- b. The applicant shall state the complete street address of the location or locations from which the business of towing shall be conducted, indicating which is its principal location and which is its storage facility(s), which shall meet the requirements of Subsection 4-7.13 of this section. The applicant shall provide a copy of a valid certificate of occupancy for the storage facility for automobile-related uses.
- c. The applicant shall identify and provide a description of its towing vehicles, including vehicle registration number, gross vehicle weight, number of wheels and purpose, with which the applicant intends to provide towing services; and which shall meet the requirements of Subsection 4-7.6 of this section. The applicant shall provide copies of the equipment manufacturer's specification for each piece of equipment.
- d. The applicant shall disclose whether he, or if the applicant is an entity, any person with an interest of 10% or more in the entity, or any towing company in which such person has an interest of 10% or more, is subject to any of the disqualification specified in § 4-7.7.
- e. The applicant shall provide the name, address and driver's license number of the applicant and all employees of the applicant that are expected to be involved in the operation of the applicant's vehicular equipment for the towing of motor vehicles. All drivers for the applicant shall be at least 18 years of age and possess a valid driver's license for the operation of the towing equipment.
- f. The applicant shall obtain a criminal background check of the applicant and all of its employees and agents, including the obtainment of a driver's abstract. The costs associated with obtaining the criminal background checks shall be the responsibility of the applicant. **Criminal background checks and fingerprinting required under this Section shall comply with the provisions of Section 4-1.2.**
- g. The application shall include a valid original certificate of insurance from an insurer authorized to do business in

the state, at the minimum amounts set forth in Subsection 4-7.11 of this section.

- h. The applicant shall provide written proof of a minimum of five years' towing experience. The applicant shall provide a minimum of three references of the applicant's towing experience.
- i. The applicant shall provide copies of all certifications for its employees as follows:
- j. Each light-duty driver, each heavy-duty driver and each recovery supervisor from a nationally recognized organization. The nationally recognized organizations that are acceptable to the Township are: Towing and Recovery Association of America (800-728-0136), Wreck Master (800-267-2266), Garden State Towman's Association (732-530-4782).
- k. The applicant shall furnish any additional information concerning the company, personnel, vehicles, equipment and storage facilities of the applicant as may be required by the Municipal Clerk or Chief of Police during the review of the application.
- l. If any of the information required in the application changes, or if additional information should be added after the filing of the application, the applicant shall provide that information to the Municipal Clerk, in writing, within 30 calendar days of the change or addition. Any application to add an additional driver during the contract term shall be accompanied by a fee of \$25.
- m. The applicant shall provide a certified statement of the willingness of the towing operator to be available on a twenty-four-hour, seven-day-per-week basis, and to abide by the instructions and directions of the Chief of Police, his subordinates, and the provisions of this section. Such towing operators shall further provide the telephone number or numbers available on a twenty-four-hour, seven-day-per-week basis.
- n. The applicant shall provide a certified statement of compliance with the minimum requirements of Subsection 4-7.6 of this section.

§ 4-7.6. Minimum Requirements Rotational Towing; Equipment.

- a. Any towing operator providing municipal rotational towing services shall have a minimum of four vehicles which meet the minimum standards set forth below:
 - 1. At least one light-duty wrecker with a minimum chassis rating of 15,000 pounds gross vehicle weight, equipped with a hydraulic boom rated for 8,000 pounds, equipped with a hydraulic wheel-lift with 3,000 pounds' lift capacity, and equipped with dual hydraulic winches with each having a capacity of 8,000 pounds, with each winch equipped with 100 feet of three-eighths-inch wire rope.
 - 2. At least two flatbed-type wreckers with a minimum chassis rating of 25,500 pounds gross vehicle weight, equipped with a minimum twenty-one-foot bed, and equipped with a hydraulic wheel-lift with 3,000 pounds' lift capacity.
 - 3. At least one of the above vehicles must have four-wheel drive.
 - 4. In addition to foregoing requirements, the towing operator must own a heavy-duty wrecker with a minimum chassis rating of 33,000 pounds gross vehicle weight, as well as have a gross vehicle weight registered of 80,000 pounds, equipped with a hydraulic boom rated for a minimum of 35 tons, equipped with a hydraulic under-reach with a minimum 45,000 pounds' lift capacity, dual hydraulic winches, and have tandem rear axles.
 - 5. All vehicles must be equipped with two-way radios, cab-mounted amber emergency warning lights (conforming to New Jersey Motor Vehicle Law standards and all light permits being obtained), tow sling-type bars with rubber straps and/or wheel-lift capability with safety straps to prevent damage to towed vehicles, and with steering locks for towing vehicles from the rear.

§ 4-7.7. Denials, Suspension or Revocation of License.

- a. The Township may deny, suspend or revoke any license for municipal towing services upon the recommendation of the Chief of Police, or upon other proof that the towing operator, or any of its employees or agents:
 - 1. Has obtained a registration through fraud, deception or misrepresentation;
 - 2. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
 - 3. Has engaged in gross negligence or gross incompetence;
 - 4. Has engaged in repeated acts of negligence or incompetence;
 - 5. Has had a towing operation registration or license revoked or suspended by any other state, agency or authority for reasons consistent with this section;
 - 6. Has violated or failed to comply on more than three occasions with the schedule of tariff or fee regulations herein; or

7. Upon proof that the applicant or holder of the registration or, if the applicant is an entity, a person with an interest of 10% or more in the applicant or holder of a registration or any towing company in which such person was a person with an interest of 10% or more and was serving in such capacity at the time the conduct or conviction required to be disclosed occurred; or
8. Has been convicted of:
 - (a) A crime under Chapter 11, 12, 13, 14 or 15 of Title 2C of the New Jersey Statutes;
 - (b) Motor vehicle theft or any crime involving a motor vehicle under Chapter 20 of Title 2C of the New Jersey Statutes; or
 - (c) Any other crime under Title 2C of the New Jersey Statutes relating adversely to the performance of towing services or the storage of motor vehicles as determined by the Chief of Police.
- b. A final refusal to license or the suspension or revocation of a license by the Township shall not be made except upon reasonable notice to the applicant and an opportunity for the applicant to be heard by the Township Committee.

§ 4-7.8. Rotating List for Rotational Towing.

- a. The Chief of Police is authorized to establish a system of rotation for the assignment of licensed towing operators to provide municipal towing services required pursuant to this section. Pursuant to N.J.S.A. 40A:11-5(1)(w), the rotation system shall be established on a nondiscriminatory and nonexclusionary basis. Only licensed towing operators with the Township shall be assigned to the rotation list. A towing operator shall be added to the rotation list at any time upon being licensed with the Township pursuant to this section. All new licensed towing operators shall be assigned to the rotation list at the bottom of such list. The rotation list shall be composed so as to permit a reasonable rotation of licensed towing operators. If the towing operator currently on call under the rotation list cannot respond and provide the required municipal towing service, the Township shall move to the next towing operator on the rotation list. If no towing operator on the rotation list is able to respond and provide the required municipal towing service, the Chief of Police may deviate from the rotation list and arrange for another towing operator to provide such service.
- b. Notwithstanding the above rotation list, in the interests of public safety, the Chief of Police, at his/her discretion, taking into account the emergency, safety and location of the situation, may part from the rotation list and call for the closest available towing operator to respond.

§ 4-7.9. Nonconsensual Towing.

- a. No person shall tow any motor vehicle parked for an unauthorized purpose from any privately owned parking lot, from other private property or from any common driveway without the consent of the motor vehicle owner or operator, unless the person is registered with the Township, is authorized to act by the owner of the private property as set forth in Paragraph b, and there is posted in a conspicuous place at all vehicular entrances to the property which can easily be seen by the public, a sign no smaller than 36 inches high and 36 inches wide stating:
 1. The purpose or purposes for which parking is authorized and the times during which such parking is permitted;
 2. That unauthorized parking is prohibited and unauthorized motor vehicles will be towed at the owner's expense;
 3. The charges, which shall not exceed the fee specified in ordinances on file with the Municipal Clerk for the towing and storage of towed motor vehicles; and
 4. The street address of the storage facility where the towed vehicles can be redeemed after payment of the posted charges and the times during which the vehicle may be redeemed.
- b. A towing company shall not remove a motor vehicle from private property without the consent of the owner or operator of the vehicle, without first obtaining the written authorization from the property owner or lessee, or its employee or agent, who shall verify the alleged violation with the Police Department by way of notification pursuant to § 4-7.19 herein below, if it occurs during normal business hours of any premises at the location operated by the property owner or lessee authorizing the removal of the vehicle, except that general authorization in writing shall be sufficient for the removal of a motor vehicle parked on private property within 15 feet of a fire hydrant, standpipe or other water source for fighting fires; in a fire lane; in an identified handicap restricted parking area; in a manner that interferes with the entrance to or exit from the property; or if the violation occurs at a time other than during normal business hours of the premises of the property owner or lessee authorizing the removal of the vehicle.
- c. Except as provided in Paragraph d of this subsection, the owner or person in lawful possession of private property may cause the removal of the motor vehicle parked on the property by a towing company registered and in

compliance with this Section 4-7 if signs are posted on the property as required under Paragraph a of this subsection, or if the vehicle is parked on the property for longer than 48 hours.

- d. The provisions of this subsection shall not apply to a motor vehicle parked on a lot or parcel on which is situated a single-family unit, or an owner-occupied multi-unit structure of not more than six units, or in front of any driveway where the motor vehicle is blocking access to that driveway.
- e. A towing company must release the vehicle to its owner who returns to the vehicle before it is removed from the property. In such instances, the towing company shall only charge the decoupling fee, and not require payment of the full basic tow fee.

§ 4-7.10. Schedule of Services Eligible for Charging Fee; Reasonable Fees.

a. Rotational towing:

- 1. A rotational towing operator may only charge a fee for those towing and storage services set forth as follows, plus the cost of any materials, parts or fuel, unless otherwise provided for in N.J.A.C. 13:45A-31.4:

Basic Tow Fee	Fees (not to exceed)	Fees (not to exceed)
	Day	Night/Weekend/Holiday
Light-duty rate (less than 10,000 G.V.W.)		
Tow	\$125	\$150
Recovery	\$150	\$200
(Basic tow is a flat rate)		
(Recovery is billed per hour, per truck, with 1 hour minimum and 30-minute increments thereafter)		
Medium-duty rate (10,000 to 32,000 G.V.W.)		
Tow	\$150	\$200
Recovery	\$250	\$350
(Basic tow is a flat rate)		
(Recovery is billed per hour, per truck, with 1 hour minimum and 30-minute increments thereafter)		
Heavy-duty rate (greater than 32,000 G.V.W.)		
Tow	\$400	\$450
Recovery	\$450	\$500
(Basic tow is a flat rate)		
(Recovery is billed per hour, per truck, with 1 hour minimum and 30-minute increments thereafter)		
Fees (not to exceed)		
Storage	Outside	Inside
Light-duty (per day)	\$35	\$50
Medium-duty (per day)	\$75	\$100
Heavy-duty (per day)	\$100	\$200
Mileage	\$4 per mile from scene or site of tow	
Road service	\$75 per call	
Decoupling fee	\$25 per call	
Clean-up labor charge	\$50 per hour	

- 2. A towing operator may not charge a service fee for towing and storage services which are ancillary to and shall be included as part of basic towing services and is not included in the schedule approved by the Township.
- 3. A towing operator must accept all forms of payment, such as a debit card, charge card or credit card, for payment in lieu of cash for towing or storage services if the operator ordinarily accepts such payment at his place of business.
- 4. A towing operator that engages in private property towing or other nonconsensual towing shall calculate storage fees based upon full twenty-four-hour periods a motor vehicle is in the storage facility. For example, if a motor vehicle is towed to a storage facility at 7:00 p.m. on one day and the owner of the motor vehicle picks up the motor vehicle on or before 7:00 p.m. the next day, the towing operator shall only charge the owner of the motor vehicle for one day of storage. If a motor vehicle is stored for more than 24 hours, but less than 48 hours, the towing operator may only charge for two days of storage.
- 5. A bill for private property tow or other nonconsensual tow shall include the time at which a towed motor vehicle was delivered to a towing company's storage facility.

6. Municipal storage rates. Storage fees to be charged to or on account of the Township for the storage of Township-owned or -operated vehicles shall not exceed those fees permitted by N.J.S.A. 40:48-2.50.
 7. The Township Committee may annually change the fees set forth herein by duly adopted resolution.
- b. Nonconsensual:
1. A towing company may only charge a service fee for the following schedule of towing and storage services, unless otherwise provided for by state law:

Service Provided	Fees (not to exceed)
Full basic tow fee	\$100
Administration fee	\$30
Storage fee	
Inside storage, per day	\$35
Outside storage, per day	\$25
Decoupling fee	\$25

2. A towing company may not charge a service fee for towing and storage services which are ancillary to and shall be included as part of basic towing services and is not included in the schedule approved by the Township.
3. A towing company must accept all forms of payment, such as a debit card, charge card or credit card, for payment in lieu of cash for towing or storage services if the operator ordinarily accepts such payment at his place of business.
4. A towing company that engages in private property towing or other nonconsensual towing shall calculate storage fees based upon full twenty-four-hour periods a motor vehicle is in the storage facility. For example, if a motor vehicle is towed to a storage facility at 7:00 p.m. on one day and the owner of the motor vehicle picks up the motor vehicle on or before 7:00 p.m. the next day, the towing company shall only charge the owner of the motor vehicle for one day of storage. If a motor vehicle is stored for more than 24 hours, but less than 48 hours, the towing company may only charge for two days of storage.

§ 4-7.11. Insurance Requirements.

In addition to the insurance requirements set forth in N.J.A.C. 45A-31.3, as may be amended from time to time, all licensed towing operators providing municipal towing services must maintain the following insurance policies, naming the Township as an additional insured:

- a. Motor vehicle liability for a tow truck capable of towing a motor vehicle that is up to 26,000 pounds, for the death of or injury to persons and damage to property for each accident or occurrence in the amount of \$750,000, single limit; and
- b. Motor vehicle liability for a tow truck capable of towing a motor vehicle that is more than 26,000 pounds, for the death of or injury to persons and damage to property for each accident or occurrence in the amount of \$1,000,000, single limit.
- c. Garagekeeper's policy: a garagekeeper's liability policy in the minimum amount of \$100,000, and on-hook coverage, for each vehicle damaged on a separate claim.
- d. Garage liability policy: a garage liability policy covering the applicant's business, equipment and vehicles in the minimum amount of \$500,000 for any one person injured or killed, and a minimum of \$1,000,000 for more than one person killed or injured in any accident and an additional \$100,000 for any damage arising from injury to or destruction of property, and/or a combined single limit of \$1,000,000. In addition to each policy containing an endorsement showing the Township as an additional insured, such policy shall also provide an endorsement entitling the Township to 30 days' prior written notice to the Chief of Police in the event of any change in coverage under the policy, or in the event of the cancellation of the policy.
- e. Worker's compensation policy: a worker's compensation policy covering all of the applicant's employees and operators, containing statutory coverage, including liability coverage of at least \$100,000 for each accident per person, \$500,000 policy aggregate limit per disease, and \$100,000 for each disease per person.
- f. Umbrella liability insurance policy in the amount of \$5,000,000.

§ 4-7.12. Indemnification.

Any license issued by the Township to a towing operator pursuant to this section shall include a provision whereupon the licensed towing operator assumes all liability and shall indemnify and save the Township, its committees, boards, departments, agents, and employees, harmless from damages or losses sustained by vehicles while being towed, stored or released from the towing operator's possession, and from all personal injuries and property damage occurring to

any persons or property as a result of the performance of the towing operator's services, including, but not limited to, towing, storage, or other such activities relating to the municipal towing services. All responsibility for the release of a stored vehicle shall be on the towing operator only.

§ 4-7.13.Storage Facilities.

- a. The towing operator providing towing services must tow all vehicles to a storage facility meeting the following requirements:
 1. Has a business office opened to the public between 8:00 a.m. and 6:00 p.m. at least five days a week, excluding holidays;
 2. Have the ability to provide inside vehicular storage;
 3. Have the ability to store a minimum of six vehicles;
 4. Is safe and secured, such as being completely fenced in;
 5. If it is an outdoor storage facility, lighted from dusk to dawn; and
 6. Is located within 10 driving miles of any Township border.
- b. The towing operator shall provide reasonable accommodations for after-hours release of stored motor vehicles and shall not charge a release fee or other charge for releasing motor vehicles to their owners after normal business hours or on weekends.

§ 4-7.14.Rotational Towing Standards of Towing Operator Performance.

All towing operators who have been licensed with the Township to provide rotational towing services shall be obligated to comply with the following duties and regulations:

- a. Remove and tow to the designated storage facility all vehicles directed by the Chief of Police to be removed and towed because such vehicles are, in the Chief of Police's sole discretion designated as abandoned, illegally parked, disabled, involved in an accident, or to be impounded because of criminal or other investigation. At the sole discretion of the Chief of Police, taking into consideration safety concerns, the owner or operator of a disabled vehicle may be permitted to arrange for the vehicle to be towed by a towing operator of his/her choice.
- b. Store such vehicles and move such vehicles as directed by Chief of Police. When not otherwise directed or required by the Chief of Police, the owner or operator of a disabled vehicle may request that the vehicle be towed to a location other than the designated storage facility. Upon direction of the Chief of Police, the towing operator shall not release a vehicle towed which is subject to a criminal investigation, including, without limitation, compliance with "John's Law," without prior authorization by the Chief of Police.
- c. Provide twenty-four-hour, seven-day-a-week service to the Township during the term of the license.
- d. Not utilize answering machines or answering services when on call under the rotation list.
- e. Respond promptly to all requests for municipal towing services by the Chief of Police. In any event, the towing operator shall respond and be present at the location (all locations within the Township) for municipal towing services within 15 minutes of receipt of notice of same between the hours of 8:00 a.m. and 5:00 p.m. (hereinafter "daytime"), and within 25 minutes of receipt of notice between the hours of 5:01 p.m. and 7:59 a.m. (hereinafter "nighttime"). In the event a towing operator does not arrive at the tow location within the above time periods, the police officer on the scene shall have the right to have a substitute towing operator called to the location who will have the right to perform the municipal towing services; and the originally called towing operator shall have no right to payment from any party.
- f. Not charge any fee for replacement of equipment or materials provided at the scene of the tow.
- g. Tow any and all disabled Township-owned or -operated vehicles upon request by the Chief of Police to a location within the Township. The towing operator will not charge the Township for the towing of Township-owned passenger vehicles or pick-up trucks within two miles of the Township border to a location within the Township. All other towing of Township-owned or -operated vehicles shall be charged pursuant to Subsection 4-7.10 at a discount of 20%. Nothing herein shall limit the Township from utilizing the towing services provided for in any public bid contract.
- h. Clean up all broken glass and debris at the scene of accidents. (All towing operators must be equipped with a broom and a shovel.)
- i. Ensure that all drivers and operators of the towing operator must wear ANSI Class 3 reflective safety vests at all times when responding to a request by the Township.
- j. Furnish additional towing equipment and services during storm periods, periods of snow emergencies, traffic emergencies, natural or other disasters, any acts of God, and for any other reason when so designated by the Chief of Police. Such standby service shall begin and end when the Chief of Police notifies the towing operator. The

Township reserves the right, during any such emergency, to designate temporary areas owned or leased by the Township and/or the towing operator for the storage of disabled vehicles, and to direct the towing operator to remove such disabled vehicles to said areas.

- k. Document record of all vehicles towed and/or stored as prescribed by the Chief of Police and retain such records for a period consistent with records retention schedules subject to the Open Public Records Act. In all of the towing operator's dealings with the public, the towing operator shall act in a professional manner, courteous at all times, and respectful to members of the public, as well as representatives of the Township. Reports of discourteous behavior by the towing operator or his/her drivers which may be substantiated and documented shall be considered by the Township as sufficient cause for revocation and termination of the towing operator's license and be considered as material default under any license entered into with a towing operator pursuant to this section.

§ 4-7.15.Solicitation.

All persons, towing operators, and owners of towing equipment are hereby prohibited from soliciting business at the scenes of accidents and emergencies within the Township.

§ 4-7.16.Complaints and Dispute Resolution.

Any person having a dispute or complaint arising from a specific act of towing services or storage of motor vehicles which is regulated by this section shall present that complaint or dispute to the Chief of Police for resolution. The Chief of Police shall render his/her decision as to how the said complaint or dispute is to be resolved within 15 business days of his/her conducting a hearing as to the same. Such hearing can be in person, by telephone or on written presentation at the election of the Chief of Police. In the event of an adverse decision against a licensed towing operator, said license may be revoked. Any appeal of the Chief of Police's decision may be appealed to the governing body of the Township.

§ 4-7.17.Violations; Enforcement and Penalties.

- a. This section shall be enforced by the Bernards Township Police Department.
- b. Any violation of the provisions of this section shall subject such violator, upon issuance of a summons and conviction in municipal court, and at the court's discretion, to the fines and penalties set forth in Township's General Penalty Ordinance for each such violation.
- c. Any violation of the provisions of this section may also subject the violator to a revocation or non-issuance of the license with the Township. If a towing operator's license is revoked pursuant to this provision, such towing operator is barred from reapplying to the Township for a period of three years from the date of the revocation.
- d. In addition to any penalties or other remedies provided herein, the towing operator that has billed a person an amount in excess of the fee specified in this section for the service provided shall reimburse such person for the excess cost.

§ 4-7.18.Unlawful Practices for Non-Consensual Towing.

It shall be an unlawful practice for any towing company:

- a. Provision of schedule of fees.
 1. Except as otherwise provided in Paragraph 2 of this subsection, to fail to provide the person whose motor vehicle is to be towed, prior to providing any towing services, a written schedule of fees.
 2. To fail to provide the schedule and information required under Paragraph 1 of this subsection immediately upon being contacted by the person whose motor vehicle was towed, if that person was not present at the time the towing services were provided.
- b. To make, give, or cause any undue or unreasonable preference or advantage or undue or unreasonable prejudice or disadvantage to any person in any particular locality, with respect to providing towing services.
- c. To give any benefit or advantage, including a pecuniary benefit, to any person for providing information about motor vehicles parked for unauthorized purposes on privately owned property or otherwise in connection with towing from privately owned property motor vehicles parked without authorization. Nothing in this section shall preclude a towing company, acting on behalf of a club or association, from charging members of the club or association a fee at a rate established by contract between the towing company and the club or association which is lower than the rate specified in the towing company's schedule on file with the Township, provided that membership in such club or association is generally available to the public.

- d. To fail, when so requested by the owner or operator of a vehicle subject to nonconsensual towing, to release a vehicle to the owner or operator that has been, or is about to be, hooked or lifted but has not actually been moved or removed from the property when the vehicle owner or operator returns to the vehicle, or to charge the owner or operator requesting release of the vehicle more than the decoupling fee.
- e. To charge any fee other than those charges established by municipal ordinance, or the rate specified in the towing company's schedule on file with the Township, or to charge a fee in an amount or for a service not listed on the schedule on file with the Township at the time. Nothing in this section shall preclude a towing company, acting on behalf of a club or association, from charging members of the club or association a fee at a rate established by contract between the towing company and the club or association which is lower than the rate specified in the towing company's schedule on file with the Township, provided that membership in such club or association is generally available to the public.
- f. To refuse to accept for payment in lieu of cash or an insurance company check for towing or storage services, such as a debit card, charge card or credit card, if the operator ordinarily accepts such payment at his place of business.

§ 4-7.19. Notification to Police Department.

The towing of any vehicle without the consent of the owner must be reported to the Bernards Township Police Department prior to the removal of the vehicle from the property. The towing operator must advise the Police Department of the time and place from which the vehicle was towed, the license number, the vehicle identification number, the make, the model and color of the vehicle, and the location to which the vehicle was towed, in order to provide the Police Department the opportunity to verify that the license number matches the vehicle identification number.

SECTION 4-8. Taxicabs

§ 4-8.1. License Required.

- a. No person who is based in the Township, as that term is defined in Subsection 4-8.2 below, shall operate or drive a taxicab or cause any taxicab to be operated or driven in the Township without having first obtained a license, issued by the Township Clerk with the consent of the Township Committee, for every operator and every vehicle to be so operated.
- b. No person who is not based in the Township shall operate or drive a taxicab or cause any taxicab to be operated or driven in the Township without first having obtained the license or certificate, if any, that is issued to or required of persons wishing to engage in such activities by the municipality in which such person is based, as that term is defined in Subsection 4-8.2 below.
- c. This section shall not be construed to prohibit the operation of a taxicab within the Township solely for the purpose of bringing passengers from points outside the Township to destinations within the Township.
- d. The obtaining of a license under this section shall not relieve the licensee of the obligation to comply with any applicable provisions of Chapter XXI, Land Development, of these Revised General Ordinances, including but not limited to Section 21-19.1, regarding parking or storage of commercial vehicles in a residential zone, and Section 21-10.4a1(g), regarding home offices (exempt) in residential zones.

§ 4-8.2. Definitions.

As used in this section:

BASED IN A MUNICIPALITY

A person who operates or drives for a taxicab or limousine business or causes such business to be operated is based in a municipality if the business:

- A. Has its principal office or principal place of business in that municipality;
- B. With respect only to a person who works for but does not operate a taxicab or limousine business, the business has a license or certificate from that municipality to operate a taxicab business.

LIMOUSINE

Shall mean and include any automobile or motor car used in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a dedicated, nonscheduled, charter basis that is not conducted on a regular route and with a seating capacity in no event of more than 14 passengers, not including the

driver, provided that such a vehicle shall not have a seating capacity in excess of four passengers, not including the driver, beyond the maximum passenger seating capacity of the vehicle, not including the driver, at the time of manufacture. It shall not be construed to include taxis.

LIMOUSINE SERVICE

Shall mean and include the business of carrying passengers for hire by limousines.

TAXI

Shall mean any automobile or motor car engaged in the business of carrying passengers for hire which is held out, announced or advertised to operate or run, which is operated or run over any of the streets or public highways of this state, and particularly accepts and discharges such persons as may offer themselves for transportation from points or places to points or places within or without the state.

TAXICAB

Shall mean and include any motor vehicle used in the business of transporting persons for hire, from or to points within the Township, including taxicabs, limousines and other vehicles hired by call, charter or special contract, whether the fare or price is agreed upon in advance.

§ 4-8.3. Public Convenience and Necessity.

Before the Township Committee shall issue any license for a taxicab, other than the renewal of an existing license, it shall be satisfied that public convenience and necessity so require.

§ 4-8.4. Application.

Every application for a license shall be filed with the Township Clerk on a form to be furnished by the Township, and no application shall be considered unless the same is fully and completely filled out and is accompanied by the required fee. Every application shall include a statement, to be signed by the applicant, consenting to the Township's obtaining copies of the applicant's driving record and/or record of criminal and disorderly persons convictions and domestic violence proceedings from the official public agencies which maintain such records. ~~The applicant shall be fingerprinted if the Chief of Police determines fingerprints are necessary for proper identification, the applicant shall be fingerprinted pursuant to the provision of Section 4-1.2, which fingerprint record shall be immediately processed for classification and identification. Every applicant who is required to submit to fingerprinting under this subsection shall pay to the Township Clerk the administrative cost of taking and processing the applicant's fingerprints, which shall be in addition to the license fees specified by this section for taxi licenses. The provisions of this subsection shall supersede the provisions of Subsection 4-1.1 for the purposes of this section only. All other provisions of Section 4-1 shall apply with respect to applications and licenses under this section.~~

§ 4-8.5. Requirements for Licensing.

- a. An applicant for a taxicab license shall be the owner of the vehicle and shall be at least 18 years of age. In passing upon any application for a taxicab license, the Township Committee may consider any information which has relevance to the applicant's moral character, business reputation, including but not limited to records relating to the applicant's driving history, convictions for any moving violation and convictions for any crime or disorderly persons offense involving any matter which reflects upon such matters, and whether the applicant has been subject to a restraining order in any domestic violence matter, or ability to properly conduct a taxicab business in an honest and responsible manner or which may reflect upon the safety of the proposed vehicle for use as a taxicab. Approval of any application for a taxicab license shall not be given unless at least one proposed driver named in the application holds a current Township taxicab driver's license or is approved for such license at the same time the application for the taxicab license is ordered. Before a license is issued or renewed, the applicant must file with the Township Clerk an insurance policy and power of attorney, as required by N.J.S.A. 48:16-3 through 48:16-5 (taxis) or N.J.S.A. 48:16-14 and 48:16-16 (limousines), as amended from time to time.
- b. ~~An applicant for a taxicab driver's license shall be at least 18 years of age. In passing upon any application for a taxicab driver's license, the Township Committee may consider any information which has relevance to the applicant's moral character, judgment, business reputation or ability of the applicant to transport passengers for hire in a safe, honest and businesslike manner, including but not limited to records relating to the applicant's driving history, convictions for any moving violation and convictions for any crime or disorderly persons offense~~

~~involving any matter which reflects upon such matters, and whether the applicant has been subject to a restraining order in any domestic violence matter.~~

§ 4-8.6. License fees.

Every applicant for a license under this section shall pay to the Township ~~Clerk~~ for the use of the Township annual license fees as follows:

- a. For each licensed taxicab: \$50.
- b. For each taxicab driver other than the owner thereof: \$25.

§ 4-8.7. License Regulations.

- a. Every person when operating a taxicab shall have a valid taxicab driver's license or certificate and the name of the issuing municipality in his possession and shall exhibit the same upon request to any public officer, taxicab passenger or other duly authorized agent of the Township.
- b. Any police officer of the Township may inspect any taxicab at any time.
- c. Every licensed taxicab shall exhibit a card containing the name of the owner of the vehicle, the number of the owner's license and the rates of fare to be charged.
- d. Every licensed operator shall, on demand, give to any passenger a receipt indicating the name of the owner, the driver's license number and the fare charged.

§ 4-8.8. Rates of Fare.

If at any time, in the opinion of the Township Committee, it becomes advisable, the Committee may adopt a schedule of rates which may be charged by the owners or drivers of taxicabs as in its judgment may seem fair and reasonable.

§ 4-8.9. Additional Requirements for Limousines.

- a.** Where applicable, any person who owns a limousine service as defined in § 4-8.2 is required by the Township to comply with the provisions found within N.J.S.A. 48:16-22.1 (entitled "Limousine Licensing"), 48:16-22.2 (entitled "Examination of limousine by operator; check list"), 48:~~16~~-22.3a (entitled "Limousine service to require certain applicant information") and 48:~~16~~-22.3b (entitled "Limousine service to require drug testing of applicants"). Failure to do so may result in a denial or revocation of a license.
- b.** Upon the filing of the required insurance policy, every applicant for a license for a limousine service shall pay to the Township a fee of \$50.00 for each limousine servicers plus \$10.00 for each limousine which is covered under the required insurance policy.

SECTION 4-9. Quarrying [NO CHANGES TO TEXT]

SECTION 4-10. Alarm Systems [NO CHANGES TO TEXT]

SECTION 4-11. Legalized Games of Chance

§ 4-11.1. License Required.

- a. An organization which has obtained an identification number from the New Jersey Legalized Games of Chance Control Commission ("Commission") may apply, to the Municipal Clerk, for a license to conduct bingo, raffles and other games of chance within the Township, including on Sundays. The Municipal Clerk is authorized and delegated the authority to issue such license as provided by law. All such applications, licenses, and games are subject to the fees, requirements, and conditions established under state law.
- b. No bingo or raffles may be conducted until 15 business days after the Commission has received, from the Municipal Clerk, a copy of the approved license application. This time period may not be waived or shortened.

§ 4-11.2. Investigation of Applicants.

- a.** Pursuant to N.J.S.A. 5:8-27 and -53, each application shall be referred to the Chief of Police who shall immediately institute such investigation of the applicant's business and moral character and ability to properly conduct the licensed activity as he deems necessary for the protection of the public good. Such

investigation shall make specific findings, including whether the applicant is in fact a qualified organization and whether the designated member or members are bona fide members of the organization, or good moral character and have never been convicted of a crime. The following criteria shall be applied when determining eligibility for license issuance:

1. An applicant may be denied if they have been convicted within the last 7 years of any indictable crime in New Jersey or in any other state or jurisdiction, for conduct which, if committed in New Jersey, would constitute an indictable crime.
2. An applicant may be denied if they have been convicted within the last 7 years of any disorderly persons offense, petty disorderly persons offense, or ordinance violation involving dishonesty, burglary, theft, receiving stolen property, or any other offense of similar nature in New Jersey or in any other state or jurisdiction, for conduct which, if committed in New Jersey, would constitute a similar offense.
3. An applicant may be denied for a conviction of any indictable crime in New Jersey involving danger to the person pursuant to N.J.S.A. 2C:11-1 et seq., N.J.S.A. 2C:24-1 et seq., N.J.S.A. 2C:14-1 et seq. or N.J.S.A. 2C:15-1 et seq., or against the family, children or incompetents, pursuant to N.J.S.A. 2C:24-1 et seq.; or in any other state or jurisdiction, for conduct which, if committed in New Jersey, would constitute any of the crimes or offenses listed in this paragraph.
4. An applicant may be denied for any conviction of an indictable crime pursuant to N.J.S.A. 2C:12-1 et seq. or N.J.S.A. 2C:13-1 et seq.; or in any other state or jurisdiction, for conduct which, if committed in New Jersey, would constitute any indictable crime listed in this paragraph.
5. An applicant may be denied for any arrest where charges have not been adjudicated involving a violation of a crime or offense involving those listed in paragraph b, c or d, where after a review of the official record and reports of the incident(s), it is reasonably believed that the applicant most likely committed the offense and would be found guilty in a judicial proceeding.
6. An applicant may be denied when there is an apparent pattern of arrests for charges listed in paragraphs b, c, and d without convictions, where after a review of the official records and reports of the incident(s), it is reasonably believed that the applicant most likely continually commits these offenses.

The Chief of Police shall communicate his findings in writing to the Township Committee within a reasonable time after the complete application has been filed. If, based upon such findings, or upon such other information as the Township Committee may request, or that may come to the attention of the Township Committee of a disqualifying event, the Township Committee decides that the applicant's character, ability or business responsibility is unsatisfactory, it shall disapprove the application and refuse to issue the license and shall so notify the applicant.

SECTION 4-12. Landlord Registration

§ 4-12.1.Registration Required.

- a. Pursuant to the requirements of the New Jersey Landlord Act, N.J.S.A. 46:8-27, et seq. eEvery landlord renting residential property located within the Township shall, within 30 days of the first tenancy, file a certificate of registration in accordance with the provisions of N.J.S.A. 46:8-28, as may be amended from time to time, with the Development Control Officer/Housing Administrator and provide a copy of the certificate simultaneously to the tenant. The certificate of registration shall be filed with the Development Control Officer/Housing Administrator of the Bernards Township Engineering Department ~~filed shall follow the form below.~~

~~TO:~~ ~~Development Control Officer/Housing Administrator~~
~~Bernards Township Engineering Department~~
~~277 South Maple Avenue~~
~~Basking Ridge, New Jersey 07920~~

CERTIFICATE OF REGISTRATION

Landlord's Statement

Pursuant to the requirements of the New Jersey Landlord Act, N.J.S.A. 46:8-27 et seq. and this Section 4-12, I hereby file the following registration statement with your office for the residential property located at:

~~(street address)~~

~~(block and lot)~~

~~in Bernards Township, Somerset County.~~

~~1. Name and address of the owner of the rental property:~~

~~or~~

~~If the property owner is a partnership, the names and addresses of all general partners:~~

~~or~~

~~If the property owner is a corporation or limited liability company:~~

~~a. Name and address of registered agent of the corporation or LLC:~~

~~b. Name and address of officers of the corporation, or members of the LLC:~~

~~2. Name and address of the owner of the operating rental business, if different than the property owner:~~

~~3. If the address of any of the property owners is not in Somerset County, provide the name and address of a person who resides in Somerset County who is authorized by the property owner to accept and sign a receipt for notices from tenants, and is further authorized to accept service of process on behalf of the property owner:~~

~~4. Name and address of the managing agent for the property (if other than property owner):~~

~~5. Name, address (including unit, apartment, room number) and phone number of maintenance employee, i.e., superintendent, janitor, custodian or other individual employed by the property owner or managing agent to provide regular maintenance service:~~

~~6. Name, address and telephone number of emergency representative of the property owner or managing agent to be available 24 hours per day, who may be reached or contracted at any time in the event of an emergency affecting the property, including such emergencies as the failure of any essential service or system, and who has the authority to make emergency decisions concerning the building and any repair thereto or expenditure in connection with the property, and who shall further have at all times access to a current list of all tenants for the property which list shall be made available to emergency personnel as required in the event of an emergency:~~

~~7. Name and address of all holders of recorded mortgages for the property:~~

~~8. If fuel oil is used to heat any building on the property, and the landlord furnishes the heat for any building, the name, address and telephone number of the fuel oil dealer servicing the building and the grade of fuel oil used:~~

~~9. Landlord is to initial on each line below to certify compliance with each notice requirement:~~

~~a. CRIME INSURANCE~~

~~Landlord has provided notice, by copy of this Statement, to Tenant as a resident of the property, that, as required by New Jersey law (N.J.S.A. 46:8-39), under Title VI of the Housing and Urban Development Act of 1970, the Federal Government is subsidizing crime insurance in order to make the same available to Residents in the State of New Jersey. Landlord has notified Tenant as follows:~~

~~"Tenant may be eligible to purchase this insurance from the SAFETY MANAGEMENT INSTITUTE, located in Washington, D.C. Tenant may contact this company directly to obtain an application and further information. Tenant may call the following toll free number: (800) 638-8780. Crime insurance is available for tenants in all habitable property through the New Jersey Underwriters Association, Crime Insurance Indemnity Plan. To apply for crime insurance, contact the New Jersey Underwriters Association, Crime Insurance for Habitable Property, 744 Broad Street, Newark, New Jersey, 07102 directly for an application."~~

~~b. TRUTH IN RENTING~~

~~Landlord has provided the Truth in Renting information to Tenant, required to be provided by New Jersey law (N.J.S.A. 46:8-45). Landlord affirms compliance with New Jersey law (N.J.S.A. 46:8-46) that requires landlords to provide a copy of the New Jersey Truth in Renting pamphlet (a twenty-six page pamphlet) to all tenants with a rental term of at least one month who are renting a house, duplex, condominium, or apartment with at least three units (unless the landlord lives in one of the three apartments). Any landlord who fails to provide the tenant with this pamphlet shall be liable to a penalty~~

~~of not more than \$100 for each offense.~~

~~e. SECURITY DEPOSITS.~~

~~In accordance with New Jersey law (N.J.S.A. 46:8-19), Landlord has provided notice to Tenant, by copy of this Statement, as follows:~~

~~"Landlord will pay Tenant interest on Tenant's security deposit, less any service fee charged by the bank or investment company. Interest will be paid annually on the anniversary of Tenant's Lease in cash or as a credit towards rent due. Further, Landlord will annually notify Tenant of certain information concerning the security deposit: the name of the bank where the security deposit is held, the type of account in which the funds are deposited, and the account's interest rate. Landlord is prohibited from increasing the amount of the security deposit by more than 10% percent per year."~~

~~I certify that the foregoing statements made by me are true and accurate to the best of my knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.~~

~~By: (sign)~~

~~Date:~~

~~Print Name:~~

- b. An amended certificate of registration shall be filed by the landlord within 20 days after any change in the information required in the certificate, in accordance with the provisions of N.J.S.A. 46:8-28.2, as may be amended, with the Development Control Officer/Housing Administrator and shall also provide a copy of the amended certificate of registration to the tenant.

c. **In addition to the foregoing, every landlord is to certify compliance with each notice requirement:**

1. Crime Insurance. Landlord has provided notice to Tenant as a resident of the property, that, as required by New Jersey law (N.J.S.A. 46:8-39), under Title VI of the Housing and Urban Development Act of 1970, the Federal Government is subsidizing crime insurance in order to make the same available to Residents in the State of New Jersey.

2. Truth in Renting. Landlord has provided the Truth in Renting information to Tenant, required to be provided by New Jersey law (N.J.S.A. 46:8-45). Landlord affirms compliance with New Jersey law (N.J.S.A. 46:8-46) that requires landlords to provide a copy of the New Jersey Truth in Renting pamphlet (a twenty-six-page pamphlet) to all tenants with a rental term of at least one month who are renting a house, duplex, condominium, or apartment with at least three units (unless the landlord lives in one of the three apartments). Any landlord who fails to provide the tenant with this pamphlet shall be liable to a penalty of not more than \$100 for each offense.

3. Security Deposits. In accordance with New Jersey law (N.J.S.A. 46:8-19), Landlord has provided notice to Tenant that Landlord will pay Tenant interest on Tenant's security deposit, less any service fee charged by the bank or investment company. Interest will be paid annually on the anniversary of Tenant's Lease in cash or as a credit towards rent due. Further, Landlord will annually notify Tenant of certain information concerning the security deposit: the name of the bank where the security deposit is held, the type of account in which the funds are deposited, and the account's interest rate. Landlord is prohibited from increasing the amount of the security deposit by more than 10% percent per year.

SECTION 4-13. Charitable Clothing Bins [NO CHANGES TO TEXT]

Section 2. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect, and to this end the provisions of this ordinance are hereby declared severable.

Section 3. All other ordinances in conflict or inconsistent with this ordinance are hereby repealed, to the extent of such conflict or inconsistency. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Township of Bernards, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the General and Land Use Ordinances of the Township of Bernards are hereby ratified and confirmed, except where inconsistent with the terms hereof.

Section 4. This Ordinance shall be so construed as not to conflict with any provision of New Jersey or Federal

law.

Section 5. This Ordinance shall take effect immediately upon adoption and publication in accordance with the laws of the State of New Jersey.

[Ordinance #2415](#) - *An Ordinance of the Township of Bernards, County of Somerset, State of New Jersey Amending Chapter 21, Article XIII Affordable Housing to Address the Requirements of the Fair Housing Act, the Uniform Housing Affordability Controls (UHAC) Regulations, and the Court-Approved Settlement Agreement with Fair Share Housing Center Regarding Compliance with the Township's Affordable Housing Obligations – Introduction*

The deputy clerk read the ordinance by title.

Motion by Baldassare, second by Harris, that Ordinance #2415 be introduced on first reading, advertised as required by law, referred to the Planning Board and scheduled for a public hearing on 04/23/2019.

Roll Call:

Aye: Baldassare, Carpenter, Esposito, Harris, Bianchi
Nay:
Abstain:
Motion carried.

BE IT ORDAINED by the Township Committee of the Township of Bernards, Somerset County, New Jersey, that Chapter 21 of the Code of the Township of Bernards is hereby amended in accordance with Bernards Township's constitutional obligation to provide for its fair share of low- and moderate-income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985. This Ordinance is intended to provide assurances that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy those units. This Ordinance shall apply except where inconsistent with applicable law.

The Bernards Township Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Housing Element and Fair Share Plan has been endorsed by the Township Council. This Ordinance implements and incorporates the adopted and endorsed Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985.

Section 1. The entirety of Article XIII is reproduced below with amendments consisting of new text, which is underlined "thus"; and deleted text, which is ~~stricken, "thus"~~):

Chapter 21. Land Development

ARTICLE XIII. Affordable Housing

SECTION 21-85. Affordable Housing Obligation

§ 21-85.1. Purpose.

- a. This article is intended to assure that low- and moderate-income units (affordable units) are created with controls on affordability over time and that low- and moderate-income individuals and households shall occupy these units.
- b. The Township of Bernards Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1 et seq. The Fair Share Plan has been endorsed by the Township Committee. The Fair Share Plan describes the ways the Township of Bernards shall address its fair share for low- and moderate-income housing as determined by the ~~Council on Affordable Housing (COAH)~~ Superior Court and documented in the Housing Element.
- c. This article implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:975:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985, as may be amended and supplemented.

d. The Township of Bernards shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its Housing Element and Fair Share Plan: file monitoring reports with COAH in accordance with N.J.A.C. 5:96, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by COAH in accordance with N.J.A.C. 5:96 shall be available to the public at the Township of Bernards Municipal Building, Municipal Clerk's Office, One Collyer Lane, Basking Ridge, New Jersey, or from COAH at 101 South Broad Street, Trenton, New Jersey and on COAH's website, www.nj.gov/dea/affiliates/coah.

1. Beginning on August 28, 2019, and on every anniversary of that date through April 1, 2025, the Township shall provide annual reporting 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 (NJDC), Council on Affordable Housing (COAH), or Local Government Services (NJLGS). The reporting 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 on August 28, 2019, and on every anniversary of that date through April 1, 2025, the Township shall provide annual reporting 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 Special Master and FSHC.

3. By July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuild sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues.

e-4. By July 28, 2020, and every third year thereafter, as required by N.J.S.A. 52:27D-329.1, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low income requirements, including its family very low income requirements. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low income and family very low income housing obligations.

e. Applicability

1. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Township of Bernards pursuant to the Township's most recently adopted Housing Element and Fair Share Plan.

2. This Ordinance 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, and also including projects funded with Low Income Housing Tax Credits.

3. Any property in the Township of Bernards that is currently zoned for nonresidential uses and subsequently receives a zoning change or use variance or approval of a redevelopment plan to permit residential development, or that is currently zoned for residential uses and receives a zoning change or density variance or approval of a redevelopment plan to permit higher density residential development, provided such density is at least twice the density previously permitted, shall provide an affordable housing set-aside of 15% if the affordable units will be for rent and 20% if the affordable units will be for sale. No property shall be subdivided so as to avoid compliance with this requirement. Moreover, this provision governs municipal actions only and shall not entitle any property owner or developer to

such action by the Township. All affordable units created pursuant to this paragraph shall be governed by the provisions of this Ordinance.

f. General requirements

1. 13% of all affordable units created subsequent to July 1, 2008 shall be very low-income units as defined herein with half of the very low-income units being available to families.
2. At least 50 percent of the units addressing the Third Round Prospective Need of 873 affordable units shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
3. At least twenty-five percent of the Third Round Prospective Need of 873 affordable units shall be met through rental units, including at least half (12.5%) in rental units available to families.
4. At least 50% of the units addressing the Third Round Prospective Need of 873 affordable units shall be available to families.
5. Not more than 25% of the Township's Prior Round Need of 508 affordable units and Third Round Prospective Need of 873 affordable units shall be addressed with age-restricted units.
6. Affirmative marketing of affordable units available in Bernards Township shall be in accordance with the Township's Affirmative Marketing Plan, with notice of available units to the following organizations: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, NORWESCAP, the Supportive Housing Association, and the Central Jersey Housing Resource Center.
7. All affordable housing developments shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of the UHAC requirement for 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law.
8. Income limits for affordable housing units for which income limits are not 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 Township annually within 30 days of the publication of determinations of median income by HUD as follows:
 - (a) Regional income limits shall be established Housing Region 3 based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Township's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for family of four. The income limit for a very low-income unit for a household of four shall be 30 percent of the regional weighted average median income 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 those for the previous year.
 - (b) The Regional Asset Limit used in determining an applicant's eligibility for affordable housing

pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

9. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.

§ 21-85.2. Definitions.

The following terms, when used in this article, 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.)

ADAPTABLE

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

ADMINISTRATIVE AGENT

The entity responsible for the administration of affordable units in accordance with this article, N.J.A.C. 5:96, N.J.A.C. 5:97 and 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 in N.J.A.C. 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, 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 Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one-hundred-percent affordable development.

AFFORDABLE HOUSING PROGRAM(S)

Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE UNIT

A housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable housing trust fund.

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.).

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:

- a. All the residents of the development where the unit is situated are 62 years or older; or
- b. At least 80% of the units are occupied by one person that is 55 years or older; or
- c. The development has been designated by the Secretary of the U.S. 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.

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 low-income household or moderate-income household.

COAH

The Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

DCA

The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT

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

DEVELOPER

Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development, including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT

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

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 COAH, or as calculated in accordance with the procedures set forth in § 21-85.1 (f) 8.a.

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.

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 COAH's adopted Regional Income Limits published annually by COAH, or as calculated in accordance with the procedures set forth in § 21-85.1 (f) 8.b.

REHABILITATION

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

RENT

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

RESTRICTED UNIT

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

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.

§ 21-85.3. Affordable Housing Programs.

The Township of Bernards has determined that it will use the following affordable housing regulations and mechanisms shall apply to to satisfy its affordable housing obligations: ~~permanent supportive housing; group homes; alternative living arrangements;~~ 100% affordable new development; extension of expiring controls; market to affordable programs; inclusionary zoning and rehabilitation programs.

a. A Rehabilitation Program.

1. The Township of Bernards' rehabilitation program shall be designed to 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.
2. Both owner-occupied and renter-occupied units shall be eligible for rehabilitation funds.
3. All rehabilitated units shall remain affordable to low- and moderate-income households for a minimum 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.
4. The Township of Bernards shall dedicate a minimum of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
5. The Township of Bernards shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for the Township of Bernards.
6. The Township of Bernards shall designate, subject to the approval ~~of COAH~~ by the Court, one or more administrative agents to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and N.J.A.C. 5:97. The administrative agent(s) shall provide a rehabilitation manual for the owner-occupancy rehabilitation program and a rehabilitation manual for the rental-occupancy rehabilitation program to be adopted by resolution of the governing body and subject to Court's approval ~~of COAH~~. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the administrative agent(s).
7. Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and uniform housing affordability controls (UHAC), but shall be administered in accordance with the following:

- (a) 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. 5:97-9 and UHAC.
 - (b) 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. 5:97-9 and UHAC.
 - (c) Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.
 - (d) Applicant and/or tenant households shall be certified as income- eligible in accordance with N.J.A.C. 5:97-9 and UHAC, except that households in owner-occupied units shall be exempt from the regional asset limit.
- b. A Market to Affordable program.
- 1. A market to affordable program is established to permit the purchase or subsidization of units through a written agreement with the property owner and sold or rented to low- and moderate-income households. Subject to the provisions of Subparagraph b2(c) below, the market to affordable programs may produce both low- and moderate-income units. (The program may be limited to only low- or only moderate-income units as per the Fair Share Plan.)
 - 2. The following provisions shall apply to market to affordable programs:
 - (a) At the time they are offered for sale or rental, eligible units may be new, preowned or vacant.
 - (b) The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.
 - (c) The municipality will provide a minimum of \$25,000 per unit to subsidize each moderate-income unit and/or \$30,000 per unit to subsidize each low-income unit, with additional subsidy depending on the market prices or rents in a municipality.
 - (d) The maximum number of creditable market to affordable units shall be equal to no more than 10 for-sale units and 10 rental units or a combined total of 10% of the fair share obligation, whichever is greater. (Additional units may be approved ~~by COAH~~ through the Court process if the municipality demonstrates the successful completion of its initial market to affordable program.)
 - 3. The units shall comply with N.J.A.C. 5:97-9 and UHAC with the following exceptions:
 - (a) Bedroom distribution [N.J.A.C. 5:80-26.3(b) and (c)];
 - (b) Low/moderate-income split [N.J.A.C. 5:80-26.3(a)]; and
 - (c) Affordability average [N.J.A.C. 5:80-26.3(d) and (e)]; however:
 - (a) The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60% of the median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 44% of the median income; and
 - (b) The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70% of the median income and the maximum sales price for a low-

income unit shall be affordable to households earning no more than 40% of median income.

c. Extension of controls.

1. N.J.A.C. 5:97-6.14(a), as upheld by the New Jersey Supreme Court, permits a municipality to address a portion of its ~~growth share~~ new construction obligation through the extension of affordability controls in accordance with N.J.A.C. 5:97-9 and UHAC, subject to the following:
 - (a) The unit meets the criteria for prior-cycle or post-1986 credits set forth in N.J.A.C. 5:97-4.2 or 4.3;
 - (b) The affordability controls for the unit are scheduled to expire during the 1999 through ~~2025~~ 2018 period;
 - (c) The municipality shall obtain a continuing certificate of occupancy or a certified statement from the municipal building inspector stating that the restricted unit meets all code standards; and
 - (d) If a unit requires repair and/or rehabilitation work in order to receive a continuing certificate of occupancy or certified statement from the municipal building inspector, the municipality shall fund and complete the work. A municipality may utilize its affordable housing trust fund to purchase the unit and/or complete the necessary repair and/or rehabilitation work.
2. The effect of expiring controls on the affordable housing stock is a serious concern for Bernards Township, and Bernards plans to make every effort to extend these controls and retain this affordability within the existing housing stock.
3. Bernards Township intends to expend funds from its Housing Trust program to secure a written commitment from the owner to extend controls.

d. Down Payment Affordability Assistance Program. [Ord. #2213, added]

1. Pursuant to Section 21-86.1h3(a), there is established a Down Payment Affordability Assistance Program funded by development fees payable only from the Affordable Housing Trust Fund and administered through the affordable housing program for eligible purchasers ("purchasers") who seek to purchase low- or moderate-income housing (an "affordable unit"). Purchasers will not receive development fee funds directly, but the Township will make funds available at closing to the purchaser's attorney trust account.
 - (a) Purchasers that seek down payment assistance through the Township's grant program must submit an application to the administrative agent. The maximum amount of any Township grant shall not exceed \$15,000, and the Township shall not award more than two per year. The Chief Financial Officer must certify that funds are available from the Affordable Housing Trust Fund.
 - (b) Qualification and eligibility for this Township Down Payment Assistance Program is as follows in Paragraphs 2 to 10:
2. Purchasers must submit an application to the administrative agent and be deemed precertified, meaning that the purchaser demonstrates to the reasonable satisfaction of the administrative agent that there is a very high likelihood that with the receipt of the grant the purchaser will be able to pay all of the required expenses relating to owning an affordable unit.
3. Purchasers will only be awarded a grant by the Township after entering a contract to purchase an affordable unit and the attorney review process has been concluded. The purchaser is responsible to pay the attorney review fee of the Township's attorney for the grant review process and closing.

4. Purchasers must have incomes not exceeding low- or moderate-income guidelines as applicable for Somerset County pursuant to the New Jersey Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq.
5. An affordable unit to qualify for purchase must meet housing quality standards as evidenced by a professional and written home inspection report accepted by the administrative agent.
6. The administrative agent must certify purchasers creditworthy, and the amount of the mortgage principal shall not exceed three times the purchaser's gross annual income.
7. Purchasers must occupy the affordable unit as a principal residence and own no other real property or dwelling. The affordable unit is for purchase only and purchasers may not lease the unit.
8. Purchasers must attend a prepurchase homebuyer education class administered by the administrative agent before entering a contract of sale for an affordable unit and thereafter receive an approval certificate by meeting with a counselor of the administrative agent.
9. The Township will make available affording housing funds at closing to the purchaser's attorney trust account. The purchaser is responsible to pay the attorney review fee of the Township's attorney for the grant review process and closing.
10. At no time will a purchaser be permitted to receive funding approval under any of the Township's affordability assistance programs more than once in a five-year time period.
11. The Township's Down Payment Assistance Program is a grant. The purchaser must repay the grant amount upon a sale of the affordable unit if less than five years from closing.

e. Homeowner Affordability Assistance Program.

1. Homeowners that may be in arrears with their mortgage, sewer/water, real estate taxes, and/or association fees may apply for the Homeowner Affordability Assistance Program, funded by developer fees and payable only from the Township Housing Trust Fund and administered through the Township of Bernards affordable housing program, for low- and moderate- income households owning units as part of said program.
2. Qualification and eligibility for this program:
 - (a) Any low- or moderate-income households, as defined by New Jersey Fair Housing Act for Somerset County, paying as part of their shelter costs, mortgage, sewer/water, real estate taxes or homeowners' association (condominium) fees (collectively defined as "shelter costs"), who are in arrears are eligible to apply for this program.
 - (b) On application for homeowner affordability assistance, the administrative agent will determine whether or not the given household is spending more than 30% of its gross income for shelter costs. This program is not available to households spending less than 30% of their gross income for shelter costs.
 - (c) If the aforementioned shelter costs, by paying off the arrearages, would allow the household to spend between 30% and 40% of gross income on shelter costs, then the household may request affordability assistance in the form of a deferred loan to assist the affordable homeowner in becoming current with his or her shelter expenses.
 - (d) The eligible household shall then submit to the office of the administrative agent income and expense information concerning the household's shelter costs and requested loan amount. The administrative agent, with the assistance of the Township of Bernards will evaluate the request

for the above-referenced loan for a maximum amount not to exceed \$15,000.

- (e) After review and approval by the administrative agent, Township Attorney, and Township of Bernards Municipal Housing Liaison and subject to the availability of funding through the Township's affordable housing program for this form of affordability assistance, the Township of Bernards may approve a loan to assist with the payment of the aforementioned shelter costs. Approval shall only be granted to applicants who demonstrate to the reasonable satisfaction of the administrative agent and the Township of Bernards that there is a very high likelihood that with the receipt of the affordability assistance provided herein that the applicant will be able to stay current with his or her shelter costs in the future. If denied, a written determination of why the funding assistance has been denied will be provided by the administrative agent. This determination shall be final and nonappealable.
- (f) The Homeowner Affordability Assistance Program is a deferred payment loan, with the loan amount (and no interest) to be repaid either upon the sale of the unit (if less than five years) or it is forgiven upon the expiration of five years from the date of the second mortgage, whichever comes first.
- (g) Loans for all properties participating in the Homeowner Affordability Assistance Program shall be secured through a mortgage and mortgage note executed by the property owner in favor of the Township of Bernards. Further, approval of any loan shall also be subject to certification by the Township Housing Liaison and Chief Financial Officer that funds are available for this form of affordability assistance.
- (h) The administrative agent will record said documents with the County Clerk's office. A copy of this information will be kept in the unit file.
- (i) At no time will any individuals/households be allowed to receive funding approval under any of the local affordability assistance programs more than once in a five-year time frame.
- (j) The purchaser is responsible to pay the attorney review fee of the Township's attorney for the loan review process and closing.

f. Alternative living arrangements.

1. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and Uniform Housing Affordability Controls (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 COAH or the 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 COAH or the 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.

§ 21-85.4. through § 21-85.6. (Reserved)

§ 21-85.7. New construction.

The following general guidelines apply to all newly constructed developments that contain low- and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

a. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.

2. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.

a.(a) In each affordable development, at least 13% of the restricted units within each bedroom distribution shall be very low-income units, which shall be part of the 50% low-income requirement in this section.

2.3. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

(a) The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;

(b) At least 30% of all low- and moderate-income units shall be two- bedroom units;

(c) At least 20% of all low- and moderate-income units shall be three- bedroom units; and

(d) The remaining units may be allocated among two and three bedroom units at the discretion of the developer.

3.4. 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. The standard may be met by having all one-bedroom units or by having a two- bedroom unit for each efficiency unit.

4.5. In inclusionary developments, the following schedule for the issuance of certificates of occupancy for the required affordable housing units relative to the issuance of certificates of occupancy for the permitted market units shall be followed:

<u>Maximum Percentage of Market-Rate Units Completed (COs Issued)</u>	<u>Minimum Percentage of Low- and Moderate-Income Units Completed (COs Issued)</u>
25	0
25+1	10
50	50
75	75
90	100

b. Accessibility requirements.

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (b) An adaptable kitchen on the first floor;
 - (c) An interior accessible route of travel on the first floor;
 - (d) An interior accessible route of travel shall not be required between stories within an individual unit;
 - (e) 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
 - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, or evidence that the Township of Bernards has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
 1. Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 2. To this end, the builder of restricted units shall deposit funds within the Township of Bernards Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 3. The funds deposited under paragraph b2(f)(2) above shall be used by the Township of Bernards for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 4. The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Township of Bernards.
 5. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township of Bernards Affordable Housing Trust Fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
 6. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

C. Design.

1. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.

~~1.2. In inclusionary developments, low- and moderate-income units shall have access to all of~~

the same common elements and facilities as the market units.

e.d. Maximum Rents and Sales Prices.

1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC ~~and in COAH~~, utilizing the regional income limits established by ~~COAH~~ the procedures set forth in § 21-85.1 (f) 8.b.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of the median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52% of the median income.
3. 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.
 - (a) At least 10% of the Township's low- and moderate-income rental units shall be affordable to households earning no more than 30% of the median income.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of the 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 prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
 - (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one-and-one-half person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four-and-one-half person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
 - (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one-and-one-half person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner 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.

8. 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 household size 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.
9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
10. The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. 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.
11. Utilities. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

§ 21-85.8. Affirmative Marketing Requirements.

The following general guidelines 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.

- a. The Township of Bernards shall adopt by resolution an affirmative marketing plan, subject to approval ~~of COAH through the Court process~~, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented, and the Township's Third Round settlement agreement with Fair Share Housing Center, dated August 28, 2018.
- b. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affection 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 also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 3, and covers the period of deed restriction.
- c. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 3, comprised of Somerset, Middlesex and Hunterdon Counties.
- d. The administrative agent designated by the Township of Bernards shall assure the affirmative marketing of all affordable units consistent with the affirmative marketing plan for the municipality.
- e. In implementing the affirmative marketing plan, the administrative agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- f. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- g. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Township of Bernards.

§ 21-85.9. Occupancy standards.

- a. In referring certified households to specific restricted units, to the extent feasible and without causing an undue delay in occupying the unit, the administrative agent shall strive to:
 - 1. Provide an occupant for each bedroom;
 - 2. Provide children of different sex with separate bedrooms; and
 - 3. Prevent more than two persons from occupying a single bedroom.
- b. Additional provisions related to occupancy standards, if any, shall be provided in the municipal Operating Manual.

§ 21-85.10. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- a. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this section until the Township of Bernards elects to release the unit from such requirements; however, and prior to such an election, 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, for at least 30 years.
- c. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- d. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- e. At the time of the first sale of the unit, the purchaser shall execute and deliver to the administrative agent 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 requirements of 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.
- f. 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.
- g. 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 that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

§ 21-85.11. Price Restrictions for Restricted Ownership Units, Homeowner 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:

- a. The initial purchase price for a restricted ownership unit shall be approved by the administrative agent.
- b. The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- c. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.

- d. The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom and only if the appropriate permits are granted by the Township of Bernards and the administrative agent, with pertinent information supplied so as to compute the adjusted price.

§ 21-85.12. Buyer Income Eligibility.

- a. 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 the median income, and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of the median income.
- b. The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33% of the household's certified monthly income.

§ 21-85.13. Limitations on Indebtedness Secured by Ownership Unit; Subordination.

- a. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- b. With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 80% of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C.5:80-26.6(b).

§ 21-85.14. Control Periods for Restricted Rental Units.

- a. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this article until the Township of Bernards elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, 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, for at least 30 years.
- b. 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 Somerset. A copy of the filed document shall be provided to the administrative agent within 30 days of the receipt of a certificate of occupancy.
- c. A restricted rental unit shall remain subject to the affordability controls of this article, despite the occurrence of any of the following events:
 - 1. Sublease or assignment of the lease of the unit;
 - 2. Sale or other voluntary transfer of the ownership of the unit; or
 - 3. The entry and enforcement of any judgment of foreclosure.

§ 21-85.15. Price Restrictions for Rental Units; Leases.

- a. A written lease shall be required for all restricted rental units, except for units in an assisted living residence,

and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the administrative agent.

- b. 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 administrative agent.
- c. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls applicable to the unit as set forth in this article.

§ 21-85.16. Tenant Income Eligibility.

- a. 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:
 - 1. Very-low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of the median income.
 - 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of the median income.
 - 3. Moderate-income rental units shall be reserved for households with a gross household income less than 80% of the median income.
- b. The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income, low-income or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% 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:
 - 1. The household currently pays more than 35% of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - 2. The household has consistently paid more than 35% of its eligible monthly income for rent in the past and has proven its ability to pay;
 - 3. The household is currently in substandard or overcrowded living conditions;
 - 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - 5. The household documents proposed third-party assistance from an outside source such as a family member, in a form acceptable to the administrative agent and the owner of the unit.
- c. The applicant shall file documentation sufficient to establish the existence of the circumstances in Paragraph b1 through 5 above with the administrative agent, who shall counsel the household on budgeting.

§ 21-85.17. Administration.

- a. The position of Municipal Housing Liaison (MHL) for the Township of Bernards is established by this section. The Township Committee shall make the actual appointment of the MHL by means of a resolution.
 - 1. The MHL must be either a full-time or part-time employee of the Township of Bernards.

2. The person appointed as the MHL must be ~~reported to COAH for approval~~ identified as required through the Court process.
3. The MHL must meet all ~~COAH~~ requirements for qualifications accepted by the Court, including initial and periodic training.
4. The Municipal Housing Liaison shall be responsible for oversight administration of the affordable housing program for the Township of including the following responsibilities which may not be contracted administrative agent:
 - (a) Serving as the municipality's primary point of contact for a from the state, affordable housing providers, administrative agents interested households;
 - (b) The implementation of the affirmative marketing plan and affordability controls.
 - (c) When applicable, supervising any contracting administrative agent.
 - (d) Monitoring the status of all restricted units in the Township of Bernards Fair Share Plan;
 - (e) Compiling, verifying and submitting annual reports as required by ~~COAH~~ the Township's Third Round affordable housing settlement agreement and enumerated in § 21-85.1(d) above;
 - (f) Coordinating meetings with affordable housing providers and administrative agents, as applicable; and
 - (g) Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by ~~COAH~~ the Affordable Housing Professionals of NJ (AHPNJ), or Fair Share Housing Center.
- b. The Township of Bernards shall designate by resolution of the Township Committee, ~~subject to the approval of COAH~~, one or more administrative agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC and the requirements of this ordinance. The Township reserves the right to contract, from time to time, ~~subject to the approval of COAH~~, with an administrative agent, other than the administrative agent named herein. Any such contract shall be authorized by resolution of the Township Committee, and shall not require amendment of this section.
- c. An operating manual shall be provided by the administrative agent(s) to be adopted by resolution of the Township Committee ~~and subject to approval of COAH~~. The operating manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the administrative agent(s).
- d. Duties and responsibilities.
 1. The administrative agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the operating manual, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:
 - (a) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by ~~COAH~~; AHPNJ;
 - (b) Affirmative marketing;
 - (c) Household certification;
 - (d) Affordability controls;

- (e) Records retention;
 - (f) Resale and rental;
 - (g) Processing requests from unit owners; and
 - (h) Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.
2. The administrative agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

§ 21-85.18. Enforcement of Affordable Housing Regulations.

- a. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- b. After providing written notice of a violation to an owner, developer or tenant of a low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - 1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the court to have violated any provision of the regulations governing affordable housing units, the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - (a) A fine of not more than \$2,000 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense.
 - (b) In the case of an owner who has rented his or her low- or moderate- income unit in violation of the regulations governing affordable housing units, payment into the Township of Bernards Affordable Housing Trust Fund of the gross amount of rent illegally collected.
 - (c) In the case of an owner who has rented his or her low- or moderate- income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
 - 2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- and moderate-income unit.
- c. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate- income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

- d. The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the Township.
- e. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- f. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- g. Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- h. The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.

§ 21-85.19. Appeals.

Appeals from all decisions of an administrative agent designated pursuant to this article shall be filed in writing with the ~~Superior Court~~ Executive Director of COAH.

SECTION 21-86. Affordable Housing Development Fees

§ 21-86.1. Standards for Collection, Maintenance and Expenditure.

- a. Findings and Purposes.
 - 1. The Township Committee of the Township of Bernards finds and declares that the creation and preservation of affordable housing in the Township serves the public interest. Maintaining and improving a stock of sound affordable housing requires affirmative steps by local government working cooperatively with public bodies at all levels and with the private sector.
 - 2. The New Jersey Supreme Court, in Holmdel Builder's Ass'n v. Holmdel Township, 121 N.J. 550 (1990), 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.

3. Pursuant to P.L. 2008, c. 46, Section 8 (N.J.S.A. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 55D-8.7), COAH is 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 are under the jurisdiction of the Council or court of competent jurisdiction and have a ~~COAH~~Court-approved spending plan may retain fees collected from nonresidential development.
4. The purpose of this subsection is to establish standards for the collection, maintenance and expenditure of development fees in accordance with COAH's rules and regulations, and in accordance with P.L. 2008, c. 46, Section 8 and 32-38. Fees collected pursuant to this subsection shall be used for the sole purpose of providing low- and moderate-income housing. This subsection shall be interpreted within the framework of ~~COAH's~~ regulations on development fees, including N.J.A.C. 5:97-~~893-1 et seq and~~ the Fair Housing Act of 1985, and as may be amended.

b. Basic Requirements.

1. This subsection shall not be effective until approved by ~~COAH the Court~~pursuant to N.J.A.C. 5:96-5.1.
2. The Township of Bernards shall not spend development fees until the Court ~~COAH~~ has approved a plan for spending such fees in conformance with N.J.A.C. 5:93-1 et seq. ~~7-8.10 and N.J.A.C. 5:96-5.3~~

c. Definitions. For the purposes of this subsection, the following terms shall have the following meanings:

AFFORDABLE means a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:97-~~993-1 et seq.~~

AFFORDABLE HOUSING DEVELOPMENT means 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 one- hundred-percent affordable development.

AFFORDABLE UNIT means any housing unit proposed or created pursuant to the Fair Housing Act of 1985, credited pursuant to N.J.A.C. 5:97-~~493-1 et seq.~~

COAH or COUNCIL means the New Jersey Council on Affordable Housing established under the Fair Housing Act of 1985, which has primary jurisdiction for the administration of affordable housing obligations in accordance with sound regional planning considerations in the state.

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

DEVELOPMENT FEES means money paid by a developer for the improvement of property as permitted in the Fair Housing Act of 1985, as amended ~~N.J.A.C. 5:97-8.3~~.

EQUALIZED ASSESSED VALUE means the assessed value of a property divided by the current average ratio of assessed to true value for the Township as determined in accordance with Sections 1, 5, and 6 of P.L. 1973, c.123 (N.J.S.A. 54:1-35a through 54:1-35c). Estimates at the time of building permit may be obtained by the Tax Assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the Tax Assessor.

GREEN BUILDING STRATEGIES means 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.

SUBSTANTIAL CHANGE means a modification or elimination of a significant condition or conditions in a memorializing resolution or any significant modification in the design or layout of the subdivision plan previously approved which require a revised or amended subdivision plan application.

d. Development Fee Schedule.

1. Residential Development.

- (a) Within the R-1, R-2, R-3, R-4, R-5, R-6, R-7, RC-1, RC-2, RC-3, RC-4, SH-1, SH-2, and SH-3 Zone Districts in the Township of Bernards, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for the residential development, provided no increased density is permitted.
- (b) When an increase in residential density pursuant to N.J.S.A. 40:55D- 70d(5) (known as a "d" variance) has been permitted, developers shall pay a development fee of 6% of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application. Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5% of the equalized assessed value on the first two units; and 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

2. Nonresidential Development.

- (a) Within all zoning districts in the Township of Bernards, nonresidential developers, except for developers of the types of development specifically exempted, 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.
[Ord. #2056, § 1, 3-10-2009, amended]
- (b) Nonresidential developers, except for developers of the types of development specifically exempted, 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. [Ord. #2056, § 1, 3-10-2009, amended]
- (c) Development fees shall be imposed and collected when an existing nonresidential 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 improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

e. Eligible Exactions, Ineligible Exactions and Exemptions.

- 1. Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- 2. 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.
- 3. Residential developments that have received preliminary or final site plan approval prior to the effective date of the initial development fee ordinance codified in this subsection shall be exempt from paying a development fee, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary and final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.

4. Development fees shall not be imposed when an existing residential structure is expanded (including additions, alterations, renovations or reconstruction work).
5. The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the two-and-one-half-percent development fee, unless otherwise exempted below.
6. The two-and-one-half-percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs to nonresidential developments.
7. Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act, P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.1, et seq.), as specified in the Form N- RDF, State of New Jersey Non-Residential Development Certification/Exemption Form. Specifically, all nonresidential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship, and property used for educational purposes, which is tax exempt pursuant to N.J.S.A. 54:4-3.6, shall be exempt from the imposition of a nonresidential development fee, provided that the property continues to maintain its tax exempt status under the statute for a period of at least three years from the date of issuance of the certificate of occupancy. In addition, the following shall be exempt from the imposition of a nonresidential development fee:
 - (a) Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a nonresidential development, such as an office building, or whether the parking lot is developed as an independent nonresidential development;
 - (b) Any nonresidential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers, as defined by the Statewide Non-Residential Development Fee Act, which are developed in conjunction with or funded by a non-residential developer;
 - (c) Nonresidential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility;
 - (d) Projects that are located within a specifically delineated urban transit hub, as defined pursuant to N.J.S.A. 34:1B-208;
 - (e) Projects that are located within an eligible municipality, as defined under N.J.S.A. 34:1B-208, which a majority of the project is located within a one-half-mile radius of the midpoint of a platform area for a light rail system; and
 - (f) Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the Department of Transportation.
8. Any exemption claimed by a developer shall be substantiated by that developer. A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L. 2008, c. 46 shall be subject to it at such time as the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.
9. 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 Township of Bernards as a lien against the real property of the owner.

f. Collection of Development Fees.

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 or other designated Township 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 Non-Residential 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 or other Township official responsible for the issuance of a building permit shall notify the Township 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 that notice, the Township 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 Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
6. Within 10 business days of a request for the scheduling of a final inspection, the Township Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
7. Should the Township fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b of Section 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).
8. The Township shall collect up to 50% of the calculated development fee at the time of the issuance of the building permit, with the remaining portion to be collected at the issuance of the certificate of occupancy. Regardless of the time of collection, the development fee shall be based on the percentage that applies on the date that building permits are issued.
9. (Reserved)
10. Appeal of development fees.
 - (a) A developer may challenge residential development fees imposed by filing a challenge with the Somerset County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Township of Bernards. 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 Township of Bernards. 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 housing trust fund to be maintained by the Chief Financial Officer of the Township for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls, which shall be designated as the "Affordable Housing Trust Fund."
2. The following additional funds may 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;
 - (b) Developer contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - (c) Rental income from municipally operated units;
 - (d) Repayments from affordable housing program loans;
 - (e) Recapture funds;
 - (f) Proceeds from the sale of affordable units; and
 - (g) Any other funds collected in connection with the Township of Bernards' affordable housing program.

3. In the event of a failure by the Township 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 Township, or, if not practicable, then within the County or the Housing Region.

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 non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, 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.

~~a. Within seven days from the opening of the trust fund account, the Township shall provide COAH with written authorization, in the form of a three party escrow agreement between the municipality, the bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).~~

~~3.4. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH~~the Court.

h. Use of Money.

1. The expenditure of all funds shall conform to a spending plan approved by ~~COAH~~the Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by ~~COAH~~the Court to address the Township of Bernards' 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, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or 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, or any other activity ~~as permitted pursuant to N.J.A.C. 5:97 8.7 through 5:97 8.9 and~~ authorized by law or regulation and specified in the approved spending plan.
 2. Funds shall not be expended to reimburse the Township for past housing activities.
 3. At least 30% of all development fees collected and interest earned 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 median income by region.
 - (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.
 - (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 use of development fees in this manner may entitle the Township of Bernards to bonus credits pursuant to N.J.A.C. 5:97 3.7.~~
 - (c) Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
 4. The Township may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, ~~in accordance with N.J.A.C. 5:96 18.~~
 5. 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 consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20% of the revenues collected from development fees shall be expended for such administrative expenses. 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 objecting to the Council's regulations and/or action are not eligible uses of the Affordable Housing Trust Fund.
- i. Monitoring. The Township shall complete and submit to ~~COAH~~the Court, Special Master, and FSHC all monitoring reports included in the monitoring requirements related to the collection of development fees from residential and nonresidential developers, payments in lieu of construction affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Township's affordable housing program, as well as to the expenditure of revenues and implementation of the plan approved by the Court ~~certified by COAH~~.

- j. Ongoing Collection of Development Fees. The Township's ability to impose, collect and expend development fees shall expire on July 1, 2025 unless the Court has approved the Township's ability to continue to collect and expend development fees beyond that date. ~~with its substantive certification unless the Township has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of this subsection.~~ If the Township fails to secure the Court's approval to renew its ability to impose and collect development fees prior July 1, 2025, ~~to the expiration of its substantive certification,~~ it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to Section 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320). The Township shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its ~~substantive certification or~~ judgment of compliance, nor shall the Township retroactively impose a development fee on such a development. The Township shall not expend development fees after the expiration of its ~~substantive certification or~~ judgment of compliance, unless approved by the Court.

[Ordinance #2416](#) - *An Ordinance of the Township of Bernards, County of Somerset, State of New Jersey, Amending, Revising and Supplementing the Code of the Township of Bernards, Chapter 21, "Revised Land Use Ordinances", Regarding Multifamily Housing in the B-5 Village Center Zone – Introduction*
The deputy clerk read the ordinance by title.

Motion by Harris, second by Esposito, that Ordinance #2416 be introduced on first reading, advertised as required by law, referred to the Planning Board and scheduled for a public hearing on 04/23/2019.

Roll Call:

Aye: Baldassare, Carpenter, Esposito, Harris, Bianchi
Nay:
Abstain:
Motion carried.

BE IT ORDAINED by the Township Committee of the Township of Bernards, County of Somerset and State of New Jersey, that Chapter 21, entitled "Land Development", of the Code of the Township of Bernards shall be amended, revised and supplemented as follows:

SECTION 1. Chapter 21, Land Development, Article IV Zoning, Section 21-10 Zones, Subsection 21-10.8.1.f.7(c), is hereby amended and supplemented by adding the following new text at the end of the current section ending in the words "inclusionary development.", so that Section 21-10.8.1.f.7(c) now reads, as follows (existing text in this section to remain appears below as plain text "thus"; new text supplemented to the end of this section appears below as underlined "thus"):

(c) Maximum number of multifamily dwelling units: 198, provided that 15 percent of the units are set aside and affordable to low and moderate income households for 30 years. The 30-year term shall begin from the date of issuance of a certificate of occupancy for each set-aside unit. Affordable units shall be provided in accordance with the schedule set forth in N.J.A.C. 5:93-5.6(d), as required in U.H.A.C. (N.J.A.C. 5:80-26.1 et seq.) and in accordance with all other applicable NJ regulations and statutes governing the delivery of affordable units for inclusionary development. Thirty (30) of the 198 proposed dwelling units shall be affordable to low- and moderate-income households for at least 30 years, which shall be established at the time the market-rate units are provided. The affordability controls, including duration, commencement, and termination, shall be governed by the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq., as may be amended or otherwise provided by subsequent law and/or regulation, provided that in lieu of 10 percent of the affordable units being affordable to households at 35 percent of median income, 13 percent of the affordable units shall be affordable households at 30 percent of median income.

SECTION 2. Chapter 21, Land Development, Article XI Regulations Applicable to the R-5 Zoning District to Provide Low- and Moderate-income Housing, Section 21-79A. Crown Court Overlay Zone, Subsection 21-79A.6, Low- and Moderate-Income Units is hereby amended and supplemented by repealing existing Subsection 21-79A.6 and replacing it with the following new subsection 21-79A.6:
21-79A.6 The controls on affordability for 19 existing low- and moderate-income units shall be extended for at least an additional 30 years. Four of the 24 proposed additional dwelling units shall be affordable to low- and

moderate-income households for at least 30 years, which shall be established at the time the market-rate units are provided. The affordability controls on both the 19 existing and four additional affordable units, including duration, commencement, and termination, shall be governed by the Uniform Housing Affordability Control, N.J.A.C. 5:80-26.1, et seq., as may be amended or otherwise provided by subsequent law and/or regulation.

The Township Clerk is directed to give notice at least ten days prior to hearing on the adoption of this ordinance to the Somerset County Planning Board and to all other persons entitled thereto pursuant to N.J.S. 40:55D-15 and N.J.S. 40:55D-63 (if required). Upon the adoption of this ordinance after public hearing thereon, the Township Clerk is further directed to publish notice of the passage thereof and to file a copy of the ordinance as finally adopted with the Somerset County Planning Board as required by N.J.S. 40:55D-16. The Clerk shall also forthwith transmit a copy of this ordinance after final passage to the Township Tax Assessor as required by N.J.S. 40:49-2.1.

PUBLIC COMMENT

None.

ADJOURNMENT

Baldassare motion, second by Esposito and by unanimous consent, the meeting adjourned at 8:25 P.M.

Respectfully submitted,

Rhonda Pisano
Deputy Municipal Clerk

Carol Bianchi
Mayor