

**RESOLUTION**  
of the  
**BOROUGH OF NEW PROVIDENCE**  
Resolution No. 2019-189

Council Meeting Date: 08-12-2019

Date Adopted: 08-12-2019

TITLE: RESOLUTION OF THE COUNCIL OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION STATE OF NEW JERSEY APPROVING THE AFFORDABLE HOUSING SPENDING PLAN

Councilperson Geoffroy submitted the following resolution, which was duly seconded by Councilperson DeSarno.

WHEREAS, on April 1, 2019, the Borough of New Providence (“Borough”) signed an amended settlement agreement with Fair Share Housing Center (“FSHC”) as well as Beckton Dickinson, Inc. (“BD”) and Murray Hill, LLC, a successor to Linde North America, Inc. (“Linde”) as well as a second settlement agreement on that same date with Linde, both of which established the Borough’s fair share obligation and preliminarily approved the Borough’s compliance mechanisms in accordance with the March 10, 2015 decision of the Supreme Court, which transferred responsibility to review and approve housing elements and fair share plans from the Council on Affordable Housing (“COAH”) to designated Mount Laurel trial judges within the Superior Court; and

WHEREAS, on April 5, 2019, Honorable Karen Cassidy, A.J.S.C. held a Fairness Hearing and subsequently on April 8, 2019 issued a Court Order approving the settlement agreements between the Borough and FSHC, BD, and Linde; and

WHEREAS, pursuant to the April 8, 2019 Court Order, the Borough must implement a Spending Plan in accordance with N.J.A.C. 5:93-5.1, et. seq.; and

WHEREAS, the Borough of New providence has prepared a Spending Plan consistent with P.L.2008, c.46 COAH regulations and the settlement agreements entered into between the Borough, FSHC, BD, and Linde; and

WHEREAS, the Borough desires to submit its Spending Plan to the Court in connection with the Compliance Action for its review and approval.

NOW THEREFORE BE IT RESOLVED, the Mayor and Council of the Borough of New Providence in the County of Union, and the State of New Jersey hereby adopts the Spending Plan that is attached hereto as Exhibit A.

APPROVED, this 12<sup>th</sup> day of August, 2019.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUMISKEY	X			
DESARNO	X			
GENNARO			X	
GEOFFROY	X			
MUÑOZ			X	
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 12<sup>th</sup> day of August, 2019.

Wendi B. Barry, Borough Clerk

**BOROUGH OF NEW PROVIDENCE**  
**AFFORDABLE HOUSING TRUST FUND SPENDING PLAN**

**AUGUST 9, 2019**

Borough of New Providence

Union County, New Jersey

Prepared By:



**Heyer, Gruel & Associates**

Community Planning Consultants  
236 Broad Street, Red Bank, NJ 07701  
(732) 741-2900

The original of this report was signed and  
sealed in accordance with N.J.S.A. 45:14A-12

A handwritten signature in black ink, appearing to read 'Susan S. Gruel', written over a horizontal line.

Susan S. Gruel, P.P. #1955

A handwritten signature in black ink, appearing to read 'M. McKinley Mertz', written over a horizontal line.

M. McKinley Mertz, AICP, P.P. #6368

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## **INTRODUCTION**

The Borough of New Providence, Union County has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) and the Fair Housing Act (N.J.S.A. 52:27D-301). A development fee ordinance creating a dedicated revenue source for affordable housing was approved by COAH on January 4, 2008 and adopted by the Borough on March 10, 2008. The ordinance established the New Providence Affordable Housing Trust Fund. An amended ordinance was prepared and adopted on May 22, 2017 via Ordinance 2017-09. Ordinance 2017-09 updates the development fee ordinance to current standards.

As of June 4, 2019, the Affordable Housing Trust Fund established by the Borough and held at Investors Bank, had collected a total of \$992,307 in development fees, interest and other income since its inception. The Borough has spent a total of \$295,667 on affordable housing activities and \$181,568 on administrative costs, leaving a current balance of \$515,072. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in this separate, interest-bearing affordable housing trust fund for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:93, or applicable regulations, as described in the sections that follow.

In accordance with the April 1, 2019 agreement with Fair Share Housing Center (FSHC), the expenditures of funds contemplated under the FSHC agreement constitute a "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of *In re Tp. Of Monroe*, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). On the first anniversary of the execution of the FSHC agreement (April 1, 2020), and every anniversary thereafter through the end of the FSHC agreement, the Borough will provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs (DCA), COAH, or Local Government Services (LGS), or other entity designated by the State of New Jersey, with a copy provided to FSHC and posted on the municipal website, using forms developed for this purpose by DCA, COAH, or LGS. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

This revised spending plan is submitted to the Superior Court of New Jersey for approval to expend all current and future affordable housing trust fund monies, as necessary, to finance the

rehabilitation program, renovations to the Elizabeth Barabash Manor and for new supportive housing.

## **1. REVENUES FOR CERTIFICATION PERIOD**

To calculate a projection of revenue anticipated during the period of third round "substantive certification," the Borough of New Providence considered the following:

(a) Development fees: \$325,000

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
3. Future development that is likely to occur based on historical rates of development.

(b) Payment in lieu (PIL): \$0

Actual and committed payments in lieu (PIL) of construction from developers.

(c) Other funding sources: \$0

Funds from other sources, including, but not limited to, the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, proceeds from the sale of affordable units. No other funds have been or are anticipated to be collected.

(d) Projected interest: \$1,463

Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate.

Projected Revenues-Housing Trust Fund - 2019 - 2025									
SOURCE OF FUNDS	Trust Fund balance as of 06/04/2019	2019	2020	2021	2022	2023	2024	2025	Total Revenue
Historical Balance	\$515,072								\$515,072
(a) Projected Development Fees	-	\$25,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$325,000
(d) Interest	-	\$113	\$225	\$225	\$225	\$225	\$225	\$225	\$1,463
<b>Total</b>	\$515,072	\$25,113	\$50,225	\$50,225	\$50,225	\$50,225	\$50,225	\$50,225	<b>\$841,535</b>

**Projected Revenues**

To calculate the projection of revenue anticipated from the general development fees, roughly 12 years (2007 through March 2019) of construction data for the Borough, acquired from the New Jersey Department of Community Affairs, was examined. Additionally, the previous transactions within the Affordable Housing Trust Fund were reviewed.

The Borough therefore projects a total of \$325,000 will be collected between June 1, 2019 and December 31, 2025. An additional \$1,463 in interest is projected to be earned. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing. In conjunction with the existing trust fund balance of \$515,072, the Borough projects total trust fund revenues and interest of \$841,535 through December 31, 2025.

## **2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS**

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Borough of New Providence:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with New Providence's development fee ordinance for both residential and non-residential developments and in accordance with N.J.S.A. 40:55D8-1 through 8.7.

(b) Distribution of development fee revenues:

The Administrative Agent and the Municipal Housing Liaison will manage the projects outlined in this Spending Plan and the Housing Element and Fair Share Plan.

(c) Collection and distribution of barrier free funds:

Collection and distribution of barrier free funds shall be consistent with the Borough's Affordable Housing Ordinance (Chapter 225 of the Borough's Revised General Code) and in accordance with applicable regulations. A process describing the collection and distribution procedures for barrier free escrow is detailed within the Borough's Affordable Housing Ordinance.

### **3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS**

The following represent the anticipated affordable housing projects within the Borough of New Providence that will utilize Trust Fund monies.

(a) **Rehabilitation program**

New Providence will dedicate \$160,768 to the rehabilitation of substandard rental units within the Borough. Pursuant to the Housing Element and Fair Share Plan, the Borough will implement a Borough-wide rental rehabilitation program to supplement the County owner rehabilitation program.

(b) **Renovation to the Elizabeth Barabash Manor**

The Elizabeth Barabash Manor is a 100% affordable age-restricted development that consists of 22 low-income rental units. The property is owned by the Borough. The facility was constructed in 1997 and is in need of some significant renovations. The Borough will dedicate \$100,000 from its trust fund to help renovate and update the existing facility.

(c) **Group Homes**

There are currently six different group home facilities in New Providence. The Borough would like to continue supporting the existing group homes as well as encourage the establishment of new group homes. The Borough will therefore make available \$180,000 from the trust fund to provide support to both the group homes who need assistance in rehabilitating their facilities as well as potential new group homes interested in establishing a facility within New Providence.

**Affordability Assistance (N.J.A.C. 5:93-8.16)**

Projected minimum affordability assistance requirement:

<b>Affordability Assistance</b>		
Actual development fees and interest earned through 6/4/2019		\$992,307
Projected development fees 2019-2025	+	\$325,000
Projected interest 2019-2025	+	\$1,463
Less housing activity expenditures through 6/4/2019	-	\$295,667
<b>Total</b>	=	<b>\$1,023,103</b>
30 percent requirement	x 0.30 =	\$306,931
<b>PROJECTED MINIMUM Affordability Assistance Requirement 06/04/2019 through 12/31/2025</b>	=	<b>\$306,931</b>
<b>PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 06/04/2019 through 12/31/2025</b>	÷ 3 =	<b>\$102,310</b>

As per the requirements regarding the use of funds for affordability assistance laid out in N.J.A.C. 5:93-8.16, the Borough is required to dedicate at least 30 percent of all development fees collected and interest earned to provide affordability assistance to low-, and moderate-income households. In addition, at least one-third of the affordability assistance shall be used to provide affordability assistance to very-low income households. The Borough, therefore, will dedicate at least \$306,931 from the affordable housing trust fund to render units more affordable, including \$102,310 to render units more affordable to households earning 30 percent or less of median income by region as follows:

- For-sale units in the form of down-payment assistance, homeowner assistance loans for Condominium or Homeowner Association fees, and homeowner assistance loans for mortgage payments up to two months or less in arrears to forestall foreclosure (Appendix A).
- For-rent units in the form of security deposit assistance and rental assistance, which are enhanced for very low-income households (Appendix A).

**Administrative Expenses (N.J.A.C. 5:93-8.16)**

<b>Administrative Expenses</b>		
Actual development fees and interest earned through 06/04/2019		\$992,307
Projected development fees 2019-2025	+	\$325,000
Projected interest 2019-2025	+	\$1,463
Total	=	\$1,318,770
20 percent cap	x 0.20 =	\$263,754
Less admin expenditures through 06/04/2019	-	\$181,568
<b>PROJECTED MAXIMUM available for administrative expenses 06/04/2019 through 12/31/2025</b>	<b>=</b>	<b>\$82,186</b>

No more than 20% of revenues collected from development fees shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop and implement: a rehabilitation program; a new construction program; a housing element; and an affirmative marketing program. Administrative funds may be used for: income qualification of households; monitoring the turnover of sale and rental units; and compliance with monitoring requirements.

Moving forward, the Borough projects that \$82,186 will be available from the affordable housing trust fund to be used for administrative purposes, including but not limited to:

- Administration and expenses associated with Borough's affordable housing units.
- Expenses associated with the creation and implementation of the Borough Rental Rehabilitation Program.
- Expenses associated with the preparation and implementation of the Housing and Fair Share Plan and monitoring of the current and future housing programs for the Borough of New Providence.

Legal or other fees related to litigation opposing affordable housing sites are not eligible uses of the affordable housing trust fund.

**4. EXPENDITURE SCHEDULE**

Program	Projected Expenditures Schedule 2019-2025							
	2019	2020	2021	2022	2023	2024	2025	Total
Rental Rehabilitation Program	\$20,000	\$20,000	\$20,000	\$20,000	\$28,000	\$30,000	\$34,418	\$172,418
Renovation of Elizabeth Barabash Manor	-	\$100,000	-	-	-	-	-	\$100,000
Renovation/Creation of Group Homes	-	\$180,000	-	-	-	-	-	\$180,000
Affordability Assistance	\$20,000	\$40,000	\$45,000	\$50,000	\$50,000	\$50,000	\$51,931	\$306,931
Administration	\$10,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,186	\$82,186

**5. EXCESS OR SHORTFALL OF FUNDS**

In the event funding sources as identified within this Spending Plan for the projects detailed in the Housing Element and Fair Share Plan prove inadequate to complete the affordable housing programs, the Borough shall provide sufficient funding to address any shortfalls through bonding.

In the event that more funds than anticipated are collected or projected funds exceed the amount necessary to implement the Borough's affordable housing projects, these excess funds will be used to fund eligible affordable housing activity pursuant to applicable rules and regulations.

A component of the settlement agreement with Linde North America, Inc. was a residential development fee on top of the standard non-residential development fee for the construction of an addition to the Lantern Hill Retirement Community, managed by Erickson Living, on 575 Mountain Avenue. The existing Lantern Hill Retirement Community is located at 603 and 535 Mountain Avenue. Pursuant to the settlement agreement, Erickson Living will pay the required non-residential development fee and a residential development fee for incremental development of the site that is greater than 17 units per acre. The Borough does not anticipate receiving these funds prior to 2025.

**SUMMARY**

The Borough of New Providence intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:93 and consistent with the housing programs outlined in its Housing Element and Fair Share Plan.

As of June 4, 2019, the Borough's trust fund has a balance of \$515,072. New Providence anticipates an additional \$326,463 in revenues and interest by December 31, 2025. The Borough will dedicate \$160,768 towards its rental rehabilitation program, \$100,000 to the renovation of the Elizabeth Barabash Manor, \$160,000 toward the renovation the existing and creation of new group homes within the Borough, \$252,460 to render units more affordable, and \$168,307 to administrative costs.

<b>SPENDING PLAN SUMMARY</b>	
Balance as of June 4, 2019	\$515,072
<b>Projected REVENUE June 1, 2019 to December 31, 2025</b>	
Development fees	+ \$325,000
Payments in lieu of construction	+ \$0
Other funds	+ \$0
Interest	+ \$1,463
<b>TOTAL REVENUE + CURRENT BALANCE</b>	<b>= \$841,535</b>
<b>EXPENDITURES</b>	
Funds used for Rental Rehabilitation, Renovation, and Creation of New	- \$420,768
Affordability Assistance	- \$306,931
Administration	- \$82,186
Excess Funds for Additional Housing Activity	= \$0
<b>TOTAL PROJECTED EXPENDITURES</b>	<b>= \$841,535</b>
<b>REMAINING BALANCE</b>	<b>= \$0</b>

**SPENDING PLAN APPENDIX A**  
**FOR-SALE UNIT AFFORDABILITY ASSISTANCE**  
**AND RENTAL UNITS AFFORDABILITY ASSISTANCE PROGRAM**

**BOROUGH OF NEW PROVIDENCE**  
**FOR-SALE UNIT AFFORDABILITY ASSISTANCE PROGRAM**  
**AND RENTAL UNIT AFFORDABILITY ASSISTANCE PROGRAM**

**FOR-SALE UNIT AFFORDABILITY ASSISTANCE PROGRAM**

**Down Payment Loan Program**

The Borough will offer a Down Payment Assistance Loan program to qualified purchasers of households earning 80% or less of median income of the housing region. To be eligible for the loan, the qualified Buyer must be able to supply 3% of the down payment with the Buyer's own funds, plus additional closing costs that exceed the amount of the loan. No gifts or other loans may be used to fund the 3% down payment amount but may be used to fund additional closing costs. The loan amount may be made up to ten percent (10%) of the purchase price.

The Borough must approve the Buyer 's qualifications and need for the loan. The loan has no prepayment penalty. It is due and payable when the Buyer resells, borrows against the property or refinances the First Purchase Money Mortgage. The loan may be subordinated only to the First Purchase Money Mortgage. When calculating the borrowing capacity of the homeowner and the equity in the property, this loan must be included. The Buyer must sign a mortgage and mortgage note to the Borough.

**Payment of Closing Costs**

Eligible Buyers may receive payment of closing costs, i.e., title work and policy, reasonable attorney's fees for closing of title, preparation of survey, homeowner's insurance, recording fees, and other necessary closing expenses to third parties, not to exceed one thousand five hundred dollars (\$1,500.) per unit. This assistance shall be in the form of a grant. Total buyer assistance grants, which include Payment of Closing Costs and Payment of Lender Fees, shall not exceed three thousand dollars (\$3,000) per unit. Utility deposits, i.e., gas and electric, paid to utility companies are to be returned to the Borough Affordable Housing Trust Fund upon resale of the unit. The buyer will execute documents required to secure payment to New Providence.

**Payment of Lender Fees**

Eligible Buyers may receive payment of lender fees, i.e., mortgage points, application fees, appraisal fees, bank attorney review fees, and necessary mortgage closing expenses, not to exceed one thousand five hundred dollars (\$1,500.) per unit. This assistance shall be in the form of a grant. Total buyer assistance grants, which include Payment of Closing Costs and Payment of Lender Fees, shall not exceed three thousand dollars (\$3000) per unit.

**Administration**

New Providence's Affordability Assistance Programs will be managed by the Borough Affordable Housing Administrative Agent. The availability of the program shall be advertised continually on the Borough's website. The following administrative process is applied to the For-Sale Unit Affordability Assistance Program:

1. The Buyer contacts the Administrative Agent to confirm that he/she wants to receive Down Payment Assistance.
2. The Buyer must present proof to the Administrative Agent that he/she is qualified for Affordable Housing in the Borough.

3. Buyer must produce an exact copy of a signed Real Estate Contract for an affordable housing unit in New Providence, which indicates clearly the full amount of the purchase price. Buyer must provide the Administrative Agent with the full name, address, phone number, and fax number of the Buyer's Attorney or Settlement Agent so that the Attorney or Settlement Agent can review and approve any and all documents required for the loan.
4. The Administrative Agent contacts the Realtor or Developer for confirmation of the sale of the unit, and the name of the Attorney handling the sale for the Developer at closing.
5. The amount of the Down Payment Assistance loan is verified (not to exceed ten percent of the Purchase Price) so that a Mortgage Note, Mortgage, and Repayment Agreement can be prepared by the Administrative Agent.
6. The amount of the Down Payment Assistance must be disclosed to the Lender, so that the Lender can accurately prepare the First Mortgage documents. The Buyer must give a copy of the First Mortgage Commitment to the Administrative Agent upon receipt of same, so that the Lender can receive full information about the Down Payment Assistance Loan, which shall constitute a Second Mortgage on the premises. The Lender must approve the secondary financing. The Borough Affordable Housing Attorney will contact the Lender once the Affordable Housing Attorney has a copy of the First Mortgage Commitment.
7. The New Providence Finance Department will generate the necessary forms and obtain Borough Council approval for it to issue an Affordable Housing Trust Fund check payable to the Seller's Attorney or Settlement Agent, so that the Down Payment Assistance check can be deposited into the Seller's Attorney Trust Account or Settlement Agent Trust Account pending Closing of Title. The letter and check to the Seller's Attorney or Settlement Agent shall state that the deposit money must be returned to the Borough if the closing is canceled, or if the sale is declared null and void. If there is a Closing of Title, the Down Payment Assistance money shall be released to the Seller. This money shall be shown on the Closing Statement as a deposit, with credit given at closing to the Buyer. The Buyer must fully execute the Mortgage Note, Mortgage, and Repayment Agreement at the Closing of Title before any money is released.
8. The Seller's Attorney or Settlement Agent shall verify that the Mortgage Note, Mortgage, and Repayment Agreement have been properly executed, and shall file the original Mortgage with the County Clerk to protect the Borough Second Mortgage on the property and return the Filed Mortgage to Affordable Housing Attorney along with the original Mortgage Note and Repayment Agreement.

## **RENTAL UNIT AFFORDABILITY ASSISTANCE PROGRAM**

### **Rental Assistance**

The Borough of New Providence may offer a Rental Assistance Program that will be managed by the Administrative Agent. Eligible recipients of the program are renters who qualify for a very-low, low- or moderate-income rental unit. The following assistance is available to very-low, low- and moderate-income households:

1. Payment of "moving expenses" based upon verified receipts, in an amount not to exceed five hundred dollars (\$500.) per family.
2. Rent subsidy for the first month's rent.
3. Utility deposit assistance.

The following assistance is available to very low-income households:

1. Payment of "moving expenses" based upon verified receipts, in an amount not to exceed one thousand five hundred dollars (\$1,500.) per household.
2. Rental security deposit – Deposits paid to landlord to be returned to the Borough's Affordable Housing Trust Fund upon termination of tenancy.
3. Rent subsidy for the first month's rent.
4. Utility deposit assistance.

Rental assistance does not need to be repaid by the tenant. The amount of the rental supplement will be calculated initially based on the tenant's actual income and the rent level of the affordable units to help bring the total shelter costs down to 30% of the total household income or lower, if warranted by the particular household circumstances. If the tenant wishes to renew the lease, he/she must be re-income qualified and the rental supplement will be recalculated. If the tenant no longer qualifies for the rental assistance, he/she may renew the lease and stay in the unit but will no longer receive rental assistance.

### **Administration**

New Providence's Rental Unit Affordability Assistance Programs will be administered by the Administrative Agent. The availability of the program shall be advertised continually on the Borough's website. After an applicant is income qualified by the Administrative Agent pursuant to the Uniform Housing Affordability Controls, the applicant will complete and provide an affordability assistance application to the Administrative Agent.

For qualified and approved payment of moving expense, the Administrative Agent will follow the Borough purchasing and requisition process for generating a check that is made out to the applicant. Once the check is produced, the Administrative Agent provides it to the applicant.

For qualified and approved payment of utility deposit, the Administrative Agent follows the Borough purchasing and requisition process for generating a check that is made out to the utility company. Once the check is produced, the Administrative Agent provides it to the applicant for payment to the utility company.

The affordability assistance recipient will sign a contract with the Borough of New Providence that states, at a minimum: the amount of funds granted, interest information, procedures, duration and conditions of affordability assistance, and repayment information if required.

The availability of any Affordability Assistance Programs must be noticed to all tenants of affordable units within the Borough and provided to all administrative agents of affordable units within New Providence and advertised on the Borough's website.

An income eligible occupant or applicant for an affordable unit within the Borough may not be denied participation in the Affordability Assistance Program(s) unless funding is no longer available.