

**BOROUGH OF HO-HO-KUS**  
**PUBLIC MEETING**  
**OF THE MAYOR AND COUNCIL**  
**MARCH 27, 2018- 7:30 P.M**  
**MINUTES**

Mayor Randall called the public meeting to order at 7:30 PM. The open meeting statement was read. The public meeting of the Mayor and Council of the Borough of Ho-Ho-Kus is now in session. In accord with the provisions of Section 5 of the "Open Public Meetings Act", I wish to advise that notice of this meeting has been posted in the front lobby entrance to the Council Chambers of the Borough Hall and that a copy of the schedule of this meeting has also been filed with the Borough Clerk, and further that the required 48 hour notices have been sent to The Record and the Ridgewood News - newspapers with general circulation throughout the Borough of Ho-Ho-Kus  
Roll Call: Members present: Mayor Randall, Councilmembers Troast, Rorty, Iannelli, Fiato and Crossley.  
Absent. Councilmember Shell  
Also present were borough administrator William Jones and attorney David Bole.

**PLEDGE OF ALLEGIANCE**

Mayor Randall led all in the pledge of Allegiance.

**BUDGET PRESENTATION**

Finance Chairperson Comments  
Councilmember Troast commented on the budget.  
Ordinance # 2018-05 "Cap Bank"

WHEREAS, the Local Government Cap Law, N.J.S. 40A: 4-45.1 et seq., provides that in the preparation of its annual budget, a municipality shall limit any increase in said budget up to 2.5% unless authorized by ordinance to increase it to 3.5% over the previous year's final appropriations, subject to certain exceptions; and,

WHEREAS, N.J.S.A. 40A: 4-45.15a provides that a municipality may, when authorized by ordinance, appropriate the difference between the amount of its actual final appropriation and the 3.5% percentage rate as an exception to its final appropriations in either of the next two succeeding years; and,

WHEREAS, the Mayor and Council of the Borough of Ho-Ho-Kus in the County of Bergen finds it advisable and necessary to increase its CY 2018 budget by up to 3.5% over the previous year's final appropriations, in the interest of promoting the health, safety and welfare of the citizens; and,

WHEREAS, the Mayor and Council hereby determines that a 1% increase in the budget for said year, amounting to \$60,097 in excess of the increase in final appropriations otherwise permitted by the Local Government Cap Law, is advisable and necessary; and,

WHEREAS the Mayor and Council hereby determines that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years.

NOW THEREFORE BE IT ORDAINED, by the Mayor and Council of the Borough of Ho-Ho-Kus, in the County of Bergen, a majority of the full authorized membership of this governing body affirmatively concurring, that, in the CY 2018 budget year, the final appropriations of the Borough of Ho-Ho-Kus shall, in accordance with this ordinance and N.J.S.A. 40A: 4-45.14, be increased by 3.5%, amounting to \$210,339.50 and that the CY 2018 municipal budget for the Borough of Ho-Ho-Kus be approved and adopted in accordance with this ordinance; and,

BE IT FURTHER ORDAINED, that any that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years; and,

BE IT FURTHER ORDAINED, that a certified copy of this ordinance as introduced be filed with the Director of the Division of Local Government Services within 5 days of introduction; and,

BE IT FURTHER ORDAINED, that a certified copy of this ordinance upon adoption, with the recorded vote included thereon, be filed with said Director within 5 days after such adoption.

Motion: Councilmember Rorty

Second Councilmember Iannelli

Absent: Councilmember Shell.

#### Introduction-2018 Budget

**BE IT RESOLVED**, that the following statements of the Revenue and appropriations shall constitute the approved Municipal Budget for the year 2018

#### **CURRENT FUND**

##### **General Appropriations**

Appropriations within "CAPS"- Municipal Purposes	\$6,252,029.00
Appropriations excluded from "CAPS"-Municipal Purchases	2,616,370.23
Reserve for Uncollected Taxes	<u>260,000.00</u>
Total General Appropriations	9,128,399.23
Less: Anticipated Revenues	<u>1,928,882.06</u>
Amount to be raised by Taxes for Support of Municipal Budget	
Local Tax Municipal Purposes	\$6,760,879.50
Minimum Library Tax	<u>438,637.67</u>
<b>Total to be raised by Taxes</b>	<b><u>\$7,199,517.17</u></b>

##### **WATER UTILITY FUND**

Appropriations	<u>\$1,568,100.00</u>
Utility Revenues	<u>\$1,568,100.00</u>

##### **SOLID WASTE UTILITY FUND**

Appropriations	<u>\$827,000.00</u>
Utility Revenues	<u>\$827,000.00</u>

The Governing Body of the Borough of Ho-Ho-Kus does hereby approve the above as the Budget for the year 2018:

Motion: Councilmember Troast

Second: Councilmember Crossley

Absent: Councilmember Shell

#### #18-46 Budget Resolution

**BE IT RESOLVED**, that the following statements of Revenues and appropriations shall constitute the Municipal Budget for the year 2018; and

**BE IT RESOLVED**, that said budget be published in the Ridgewood News on March 30<sup>th</sup> 2018; and

**BE IT FURTHER RESOLVED**, that the Governing Body of the borough of Ho-Ho-Kus does hereby approve the following as the Budget for the year 2018

Motion: Councilmember Troast

Second: Councilmember Rorty

Absent: Councilmember Shell

#### **APPROVAL OF MINUTES**

February 27, 2018

Motion: Councilmember Crossley

Second Councilmember Rorty

Abstain: Councilmembers Troast, Iannelli and Fiato



Ordinance # 2018-02 “Development Fee”

**BE IT ORDAINED** that the Council of the Borough of Ho-Ho-Kus hereby amends Chapter 17, entitled “Development Fees”, of the Borough Code. The following sections of this Chapter shall read as follows:

**Section I. §17-1, “Purpose”. §17-1.B shall be amended, §17-1.C shall be added, and new §17-1.D shall be amended:**

- B. COAH was authorized by P.L. 2008, c. 46, Section 8 (N.J.S.A. 52:27D-329.2), and the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7) 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 COAH or a court of competent jurisdiction and have a COAH or court-approved spending plan may retain fees collected from nonresidential development.
- C. In Re: Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), also known as the Mount Laurel IV decision, the Supreme Court remanded COAH’s duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from the municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 1, 2025 are under the Court’s jurisdiction and are subject to approval by the Court.
- D. This chapter establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH’s regulations and in accordance with P.L. 2008, c. 46, Sections 8 and 32 through 38.<sup>1</sup> Fees collected pursuant to this chapter shall be used for the sole purpose of providing low- and moderate-income housing. This chapter shall be interpreted within the framework of COAH’s rules on development fees, codified at N.J.A.C. 5:93-8.

**Section II. §17-2, “Basic requirements”, Amended.**

- A. This chapter became effective when COAH approved the Borough’s development fee ordinance, and remains effective pursuant to the Superior Court’s jurisdiction in accordance with N.J.A.C. 5:93-8.
- B. COAH approved the Borough’s initial Spending Plan on July 7, 1998. Subsequently, in an Order of December 18, 2017, the Superior Court conditionally approved the Borough’s Amended Third Round Spending Plan. Consequently, upon the entry of an Order granting an unconditional Final Judgment of Compliance and Repose to Ho-Ho-Kus, Ho-Ho-Kus may spend development fees in conformance with N.J.A.C. 5:93-8.

**Section III. §17-3, “Definitions”, Amended.** The definitions of the following terms as found in §17-3 shall read as follows:

COAH or THE COUNCIL — The New Jersey Council on Affordable Housing established under the Fair Housing Act

DEVELOPMENT FEE — Money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8.

**Section IV. §17-7, “Affordable housing trust fund”, Amended.** §17.7.C and D shall read as follows:

- C. Within seven days from the opening of the trust fund account, Ho- Ho-Kus previously provided COAH with written authorization, in the form of a three-party escrow agreement between the municipality, Bank of America and COAH, to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8. The Superior Court shall now have such jurisdiction to direct the disbursement of the Borough’s trust funds per N.J.A.C. 5:93-8.
- D. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

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<sup>1</sup> Editor’s Note: See N.J.S.A. 52:27D-329.2 and N.J.S.A. 40:55D-8.1 through 40:55D-8.7, respectively.

**Section V. §17-8, “Use of funds”.** §17.8.A, D and E shall read as follows:

- A. The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the housing trust fund may be used for any activity approved by the Court to address the Borough's 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. 5:93-8.16 and specified in the approved spending plan.
- D. Ho-Ho-Kus 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. 5:93-8.16.
- E. 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 the monitoring requirements set forth in the Court-approved January 12, 2017 executed Settlement Agreement with Fair Share Housing Center. 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.

**Section VI. §17-9, “Monitoring”.** §17.9 shall read as follows:

On or about January 12 of each year through 2025, Ho-Ho-Kus shall 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 Fair Share Housing Center and Intervenor and posted on the municipal website, using forms developed for this purpose by the DCA, COAH, or LGS. This reporting shall include an accounting of all housing trust fund activity, including the collection of development fees from residential and nonresidential developers, payments in lieu of constructing 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 Ho-Ho-Kus' housing program, as well as to the expenditure of revenues and implementation of the plan approved by the Court.

**Section VII. §17-10, “Ongoing collection of fees”.** §17.10 shall read as follows:

The ability for Ho-Ho-Kus to impose, collect and expend development fees shall expire with its court-issued Judgment of Compliance and Repose unless Ho-Ho-Kus has filed an adopted Housing Element and Fair Share Plan with the court or other appropriate jurisdiction, has filed a Declaratory Judgment Action, and has received the court's approval of its development fee ordinance. If Ho-Ho-Kus fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance and Repose, it may be subject to forfeiture of any or all funds remaining within its municipal 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). Ho-Ho-Kus shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance and Repose, nor shall Ho-Ho-Kus retroactively impose a development fee on such a development. Ho-Ho-Kus shall not expend development fees after the expiration of its or Judgment of Compliance and Repose.

**Section VIII. Repealer.** All ordinances or Code provisions or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

**Section IX. Severability.** If any section, subsection, paragraph, sentence or any other part of this ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance.

**Section X. Effective Date.** This ordinance shall take effect upon its passage and publication, as required by law.

Motion: Councilmember Rorty

Second: Councilmember Crossley

Ordinance # 2018-03 “Affordable and Fair Share Housing”

**WHEREAS**, the Borough Council of the Borough of Ho-Ho-Kus, Bergen County, State of New Jersey (“Council”) adopted an Ordinance on July 25, 2017 adding Chapter 85-13.1, entitled “Downtown Overlay Ordinance”, to the Borough Code, as required by a Court approved Settlement Agreement between the Borough, Fair Share Housing Center, Chamberlain Developers, Inc. (“Chamberlain”), and Jonathan L. Mechanic (d.b.a. Ho-Ho-Kus Crossings) (Collectively, “Intervenors”); and

**WHEREAS**, on December 13, 2017, the Special Master to the Court In the Matter of the Application of the Borough of Ho-Ho-Kus submitted a letter to the Court recommending approval of the Borough’s Adopted Housing Element and Fair Share Plan, subject to the Borough satisfying several conditions.

**WHEREAS**, the Superior Court held a Compliance Hearing on December 18, 2017 at which time the Court conditionally approved the Borough’s Adopted Housing Element and Fair Share Plan, subject to the conditions recommended in the Master’s December 13, 2017 letter; and

**WHEREAS**, pursuant to the Court order entered by the Honorable Christine Farrington, J.S.C. on December 18, 2017, the Borough received a Judgment of Repose through July 1, 2025 provided the Borough complies with the Master’s conditions by April 17, 2018, at which time the Borough shall submit a certification to the Master that all conditions for a Final Judgment of Compliance and Repose have been met; and

**WHEREAS**, by email dated February 5, 2018, the Master requested as an additional condition of approval that the Borough amend the Downtown Overlay Ordinance to remove a section that permitted developers of inclusionary residential development to pay a special development fee to the Borough’s Affordable Housing Trust Fund where the required affordable housing set-aside does not equal a whole integer, as an alternative to rounding upward and constructing one unit in excess of the set-aside requirement; and

**WHEREAS**, the Borough’s and Planning Board’s affordable housing planning consultants Mary Beth Lonergan, PP, AICP, and Daniel Hauben, PP, AICP, of Clarke Caton Hintz, PC, have amended the Downtown Overlay Ordinance so as to replace the development fee with a payment in-lieu in accordance with §2-3.C of the Borough Code.

**THEREFORE, BE IT ORDAINED** by the Borough Council of the Borough of Ho-Ho-Kus, County of Bergen and State of New Jersey, that §85-13.1, entitled "Downtown Overlay", of the "Code of the Borough of Ho-Ho-Kus" ("Code") is hereby amended pursuant to the sections below.

**Section I. Section 85-13.1.C, “Special Rules”, of Article IV, “District Regulations” Of Chapter 85, “Zoning Ordinance of the Borough of Ho-Ho-Kus”, Created.** That Section 85-13.1.C is hereby amended to read as follows

C. Special Rules: Inclusionary multi-family development is permitted in each OL Overlay zone, conditioned on compliance with this ordinance and the following limitations:

- (4) In any multi-family inclusionary development permitted by this ordinance, at least 20% of the residential units must be affordable to low- and moderate-income households. In the event that 20% of the total number of residential units does not result in a full integer, the developer / property owner shall refer to §2-3.C with regard to addressing the fractional unit.

**Section II. Repealer.** All ordinances or Code provisions or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

**Section III. Severability.** If any section, subsection, paragraph, sentence or any other part of this ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance.

**Section IV. Effective Date.** This ordinance shall take effect upon its passage and publication, as required by law.

Motion: Councilmember Rorty

Second: Councilmember Iannelli

Absent: Councilmember Shell

Ordinance # 2018-04 “Inclusionary Overlay Zone”

**WHEREAS**, the Borough Council of the Borough of Ho-Ho-Kus, Bergen County, State of New Jersey (“Council”) adopted an Ordinance on July 25, 2017 adding Chapter 2, entitled “Affordable Housing”, to the Borough Code, as required by a Court approved Settlement Agreement between the Borough, Fair Share Housing Center, Chamberlain Developers, Inc. (“Chamberlain”), and Jonathan L. Mechanic (d.b.a. Ho-Ho-Kus Crossings) (Collectively, “Intervenors”); and

**WHEREAS**, on December 13, 2017, the Special Master to the Court In the Matter of the Application of the Borough of Ho-Ho-Kus submitted a letter to the Court recommending approval of the Borough’s Adopted Housing Element and Fair Share Plan, subject to the Borough satisfying several conditions including making certain amendments to the Affordable Housing Ordinance.

**WHEREAS**, the Superior Court held a Compliance Hearing on December 18, 2017 at which time the Court conditionally approved the Borough’s Adopted Housing Element and Fair Share Plan, subject to the conditions recommended in the Master’s December 13, 2017 letter; and

**WHEREAS**, pursuant to the Court order entered by the Honorable Christine Farrington, J.S.C. on December 18, 2017, the Borough received a Judgment of Repose through July 1, 2025 provided the Borough complies with the Master’s conditions by April 17, 2018, at which time the Borough shall submit a certification to the Master that all conditions for a Final Judgment of Compliance and Repose have been met; and

**WHEREAS** the Borough’s and Planning Board’s affordable housing planning consultants Mary Beth Lonergan, PP, AICP, and Daniel Hauben, PP, AICP, of Clarke Caton Hintz, PC, have amended the Affordable Housing Ordinance in accordance with the conditions of the Court Master’s December 13, 2017 letter to the Court.

**THEREFORE, BE IT ORDAINED** by the Borough Council of the Borough of Ho-Ho-Kus, County of Bergen and State of New Jersey, that Chapter 2, entitled "Affordable Housing Ordinance", of the "Code of the Borough of Ho-Ho-Kus" ("Code") is hereby amended and shall read as follows.

**Section I. § 2-1, entitled “Affordable Housing Obligation”, revised.** §2-1.A and B shall read as follows:

- A. This section of the Borough Code sets forth regulations regarding the low and moderate income housing units in the Borough consistent with the provisions known as the “Substantive Rules of the New Jersey Council on Affordable Housing”, *N.J.A.C.* 5:93 et seq., the Uniform Housing Affordability Controls (“UHAC”), *N.J.A.C.* 5:80-26.1 et seq., except where modified by the terms of a Settlement Agreement between the Borough and Fair Share Housing Center (“FSHC”) such that the statutory requirement to provide very-low income units equal to 13% of affordable units approved and constructed after July 1, 2008, to be affordable to households at 30% of the regional median income, overrides the UHAC requirement that 10% of all low- and moderate-income units must be affordable at 35% of the regional median income, and the Borough's constitutional obligation to provide a fair share of affordable housing for low and moderate income households. In addition, this section applies requirements for very low income housing as established in P.L. 2008, c.46 (the "Roberts Bill", codified at *N.J.S.A.* 52:27D-329.1).
- B. This Ordinance is intended to assure that very-low, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very-low, low- and moderate-income households shall occupy these units. This Ordinance shall apply to all inclusionary developments and 100% affordable developments (including those funded with low-income housing tax credit financing) except where inconsistent with applicable law.

**Additionally, the following is hereby added after §2-1.E:**

- F. On or about January 12 of each year through the end of the period of Third Round Judgment of Repose, the Borough will 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 all parties to the Borough’s Court-approved Settlement Agreements, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and Fair Share Housing Center (“FSHC”).
- G. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in the Borough’s agreement with FSHC. The Borough agrees to comply with those provisions as follows:

1. By July 1, 2020, the Borough must prepare a midpoint realistic opportunity review, as required pursuant to N.J.S.A. 52:27D-313, which the Borough will post on its municipal website, with a copy provided to FSHC and the Intervenors, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC and the Intervenors, 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. In the event the Court determines that a site or mechanism no longer presents a realistic opportunity and should be replaced or supplemented, then the municipality shall have the opportunity to supplement or revise its plan to correct any deficiency.
2. Within 30 days of January 12, 2020 and January 12, 2023 the Borough shall prepare a review of compliance with the very low income housing requirements required by N.J.S.A. 52:27D-329.1 and its Settlement Agreement with Fair Share Housing Center. The Borough will post on its municipal website, with a copy provided to FSHC and the Intervenors, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein and in the Borough's Settlement Agreement with FSHC. Such posting shall invite any interested party to submit comments to the municipality and FSHC and the Intervenors on the issue of whether the municipality has complied with its very low income housing obligation.

**Section II. §2-3, Entitled, "Borough-wide Mandatory Set-Aside"**. §2.3.C is hereby added, and shall read as follows:

- C. In the event that the inclusionary set-aside percentage (15% or 20%) of the total number of residential units does not result in a full integer, the developer may choose one of two options of addressing the fractional unit:
  1. The developer shall round the set-aside upward to construct a whole additional affordable unit; or
  2. If the set-aside includes a fractional unit equal to 0.49 or less, the developer may round the set-aside downward and construct the lesser whole number of affordable units, but must also make a payment in-lieu of constructing the fractional additional unit ("fractional payment in-lieu").
    - a. The fractional payment in-lieu amount shall be calculated as the fractional unit multiplied by the base payment in-lieu dollar amount established in §2-4.C.1 of the Borough Code.
  3. For Example: If seven (7) total units are developed at an inclusionary site, a 20% set-aside would require 1.4 affordable units. Per the requirements above:
    - a. The developer shall round up the 0.4 unit to one (1) whole affordable unit so as to construct a total of two (2) affordable housing units, in accordance with §2-3.C.1; or
    - b. In accordance with §2-3.C.2, the developer shall round the set-aside downward so as to construct only (1) affordable unit AND shall pay into the Borough's affordable housing trust fund a fractional in-lieu payment equal to the dollar amount established in §2-4.C.1 multiplied by 0.4 units.

**Section III. § 2-4 Entitled "New Construction"**. §2-4.C is amended and §2-4.C.1 is hereby added.

- C. Payments-in-lieu and off-site construction. The standards for the collection of payments-in-lieu of constructing affordable units or standards for constructing affordable units off-site, shall be in accordance with the requirements below:
  1. The base dollar amount of the payment in-lieu of constructing an affordable unit at the time of adoption of this Ordinance shall be \$180,2672. This amount shall be adjusted periodically by the Borough to reflect the most current and accurate market conditions or better cover the cost to the Borough to subsidize affordable housing construction.

The payment shall be imposed as a condition of development approval by the Planning Board.

- a. During the development approval process, a developer may demonstrate to the Governing Body that the actual construction cost of an affordable unit less estimated capitalized revenue at the development in question is lower than the imposed payment in-lieu in §2-4.C.1. At its discretion, the Governing Body may impose a lower payment in-lieu amount equal or proximate to the amount estimated by the developer.

**Additionally, §2-4.G.9 and 10, shall read as follows:**

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. Income limits for all units for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Borough annually within 30 days of the publication of determinations of median income by HUD as follows:
  - a. Regional income limits shall be established for the Region 1 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 Region 1. 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 a 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 income limits calculated each year shall be the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the relevant fiscal year, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
  - c. 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 Borough 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.
10. The rent levels of very-low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent 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

**Section III. §2-12 "Occupancy Standards".** §2-12.A shall be amended to read as follows:

- 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 separate bedrooms for parents and children;
3. Provide children of different sexes with separate bedrooms; and
4. Prevent more than two persons from occupying a single bedroom.

**Section IV. § 2-14, Entitled “Control Periods for Restricted Ownership Units and Enforcement Mechanisms”.** §2-14.A and B shall be amended to read as follows:

- A. Control periods for restricted ownership units shall be in accordance with *N.J.A.C. 5:80-26.5*, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.
- B. Rehabilitated owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.

**Section V. § 2-18, “Control Periods for Restricted Rental Units”.** §2-18. A shall be amended to read as follows:

- A. Control periods for restricted rental units shall be in accordance with *N.J.A.C. 5:80-26.11*, and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.

**Section VI. Repealer.** All ordinances or Code provisions or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

**Section VII. Severability.** If any section, subsection, paragraph, sentence or any other part of this ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance.

**Section VIII. Effective Date.** This ordinance shall take effect upon its passage and publication, as required by law.

Motion: Councilmember Rorty  
Second: Councilmember Crossley  
Absent: Shell

## RESOLUTIONS

None

## CONSENT RESOLUTION

#18-47 Endorse HEFSP

**WHEREAS**, the Planning Board of the Borough of Ho-Ho-Kus, Bergen County, State of New Jersey (“Planning Board”) adopted a Third Round Housing Element and Fair Share Plan on July 20, 2017 pursuant to N.J.S.A. 40:55D- 28, and N.J.A.C. 5:93, and the Court approved Settlement Agreement between the Borough, Fair Share Housing Center, Chamberlain Developers, Inc. (“Chamberlain”), and Jonathan L. Mechanic (d.b.a. Ho-Ho-Kus Crossings) that established the Borough’s fair share obligation, granted a vacant land adjustment of the Borough’s Third Round obligation, and outlined the Borough’s compliance mechanisms; and

WHEREAS, the Borough Council endorsed the Plan on July 25, 2017 at a properly-noticed public meeting; and

WHEREAS, the Borough’s adopted and endorsed Plan included a commitment by the Borough to utilize its affordable housing trust fund to establish a municipal housing rehabilitation program for low- and moderate-income renter households in order to address the rental component of its rehabilitation share; and

WHEREAS, on July 25, 2017, the Borough Council adopted Resolution 17-80, “Committing to engage an experienced administrative agent to administer a municipal housing rehabilitation program for low- and moderate-income renter households”; and

**WHEREAS**, on December 13, 2017, the Special Master to the Court In the Matter of the Application of the Borough of Ho-Ho-Kus submitted a letter to the Court recommending approval of the Borough’s Adopted Housing Element and Fair Share Plan, subject to the Borough satisfying several conditions including making certain amendments to the adopted Third Round Housing Element and Fair Share Plan; and

**WHEREAS**, the Special Master to the Court and Fair Share Housing Center recommended to the Court that it should grant the Borough a waiver from addressing the rental component of its rehabilitation share; and

**WHEREAS**, the Superior Court held a Compliance Hearing on December 18, 2017 at which time the Court conditionally approved the Borough's Adopted Housing Element and Fair Share Plan, subject to the conditions recommended in the Master's December 13, 2017 letter, and waived the Borough's rental component of its rehabilitation share; and

**WHEREAS**, pursuant to the Court order entered by the Honorable Christine Farrington, J.S.C. on December 18, 2017, the Borough received a Judgment of Repose through July 1, 2025 provided the Borough complies with the Master's conditions by April 17, 2018, at which time the Borough shall submit a certification to the Master that all conditions for a Final Judgment of Compliance and Repose have been met; and

**WHEREAS**, the Borough's and Planning Board's affordable housing planning consultants Mary Beth Lonergan, PP, AICP, and Daniel Hauben, PP, AICP, of Clarke Caton Hintz, PC, have amended the Third Round Housing Element and Fair Share Plan in accordance with the conditions of the Court Master's December 13, 2017 letter to the Court; and

**WHEREAS**, the Borough has amended its Housing Element and Fair Share Plan to remove its proposal to establish municipal rental rehabilitation program.

**NOW THEREFORE, BE IT RESOLVED** the Borough Council of the Borough of Ho-Ho-Kus, Bergen County, State of New Jersey, hereby endorses the Amended Third Round Housing Element and Fair Share Plan adopted by the Planning Board on March 8, 2018; and

**BE IT FURTHER RESOLVED**, that the Borough Council of the Borough of Ho-Ho-Kus hereby rescinds Resolution 17-80.

#18-48 Appt. Tax Assessor- Edmund Brown

WHEREAS, Marie Merolla CTA has retired from the Borough of Ho-Ho-Kus; and

WHEREAS, the Borough of Ho-Ho-Kus has a need for a Tax Assessor; and

WHEREAS, the administrator has interviewed Edmund Brown and has verified his reference; and

WHEREAS, the administrator recommends to the Mayor and Council the appointment of Edmund Brown; and

**NOW, THEREFORE BE IT RESOLVED**, by the Mayor and Council of the Borough of Ho-Ho-Kus that they accept the recommendation of the administrator and appoints Edmund Brown CTA as the Tax Assessor for the Borough of Ho-Ho-Kus; and

**BE IT FURTHER RESOLVED**, that Edmund Brown be appointed to finish the term of the retired Tax Assessor from April 1, 2018 to June 30, 2018 for an annual salary of \$20,000 to be prorated for the remainder of the term.

#18-49 Ban Note

WHEREAS, the Borough of Ho-Ho-Kus, in the County of Bergen, New Jersey (the "Borough") from time to time issues bonds, notes and other obligations, the interest on which is excluded from gross income for Federal income tax purposes, and desires to take such action as may be necessary or advisable to establish and maintain such exclusion; and

WHEREAS, the Internal Revenue Code of 1986, as amended (the "Code"), contains provisions with respect to the exclusion from gross income for Federal income tax purposes of interest on obligations, including provisions, among others, which require issuers of tax-exempt obligations, such as the Borough to account for and rebate certain arbitrage earnings to the United States Treasury and to take other action to establish and maintain such Federal tax exclusion; and

WHEREAS, the Borough intends to issue a \$5,440,000 bond anticipation note, dated March 29, 2018 and payable February 15, 2019 (the "Note"); and

WHEREAS, the Borough desires to designate the Note as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Code;

**NOW, THEREFORE, BE IT RESOLVED** by the Borough Council of the Borough of Ho-Ho-Kus, in the County of Bergen, New Jersey, as follows:

**SECTION 1.** The Borough Council hereby covenants on behalf of the Borough, to the extent permitted by the Constitution and the laws of the State of New Jersey, to do and perform all acts and things permitted by law and necessary to assure that interest paid on bonds, notes or other obligations of the Borough

(including the Note) be and remain excluded from gross income of the owners thereof for Federal income tax purposes pursuant to Section 103 of the Code.

SECTION 2. The Mayor, Borough Clerk, Chief Financial Officer and the other officials of the Borough are hereby authorized and directed to take such action, make such representations and give such assurances as they may deem necessary or advisable to effect compliance with the Code

SECTION 3. The Note is hereby designated as a "qualified tax-exempt obligation" for the purpose of Section 265(b)(3) of the Code.

SECTION 4. It is hereby determined and stated that (1) the Note is not a "private activity bond" as defined in the Code and (2) the Borough and its subordinate entities, if any, do not reasonably anticipate issuing in excess of \$10 million of new money tax-exempt obligations (other than private activity bonds) during the calendar year 2018.

SECTION 5. It is further determined and stated that the Borough has not, as of the date hereof, issued any tax-exempt obligations (other than the Note) during the calendar year 2018.

SECTION 6. The Borough will, to the best of its ability, attempt to comply with respect to the limitations on issuance of tax-exempt obligations pursuant to Section 265(b)(3) of the Code; however, said Borough does not covenant to do so, and hereby expressly states that a covenant is not made hereby.

SECTION 7. The issuing officers of the Borough are hereby authorized to deliver a certified copy of this resolution to the original purchaser of the Note and to further provide such original purchaser with a certificate of obligations issued during the calendar year 2018 dated as of the date of delivery of the Note.

SECTION 8. This resolution shall take effect immediately upon its adoption.

#18-50 Transfer of Funds	<b>FROM:</b>	<b>TO:</b>
(2017) Utilities	\$28,000	
Fire Hydrant (O.E)	\$10,000	
(2017) Legal (O.E)		\$38,000
Total		<u>\$38,000.00</u>

#### #18-51 Conceal and Carry

**WHEREAS**, on January 3, 2017, Congressman Richard Hudson (R-NC) introduced H.R. 38, known as the Concealed Carry Reciprocity Act of 2017 (which was passed by the US House of Representatives in December 2017), and on February 27, 2017, Senator John Cornyn ((R-TX) introduced S. 446, known as the Constitutional Concealed Carry Reciprocity Act of 2017, both of which would force every state to recognize concealed carry permits by every other state, regardless of the permitting standards, or lack thereof, of that state; and

**WHEREAS**, while every state allows concealed carry under some circumstances, each state has different requirements on who is permitted to carry, what requirements are appropriate, and what type of training should be required of permit holders; and

**WHEREAS**, currently, many states, including New Jersey, prohibit out-of-state residents from carrying concealed weapons within their borders without complying with their own requirements; and

**WHEREAS**, the Concealed Carry Reciprocity Act of 2017 (H.R. 38) and the Constitutional Concealed Carry Reciprocity Act of 2017 (S. 446) would force all states to recognize so-called "constitutional" or permitless carry, which allows gun owners to carry without receiving any permit or training; and

**WHEREAS**, New Jersey, like many other states, requires applicants to demonstrate a specific need for obtaining a concealed-carry permit; and

**WHEREAS**, the bills would effectively override existing state and municipal laws and severely limit the municipality's ability to prevent dangerous people from carrying loaded, hidden firearms in public;

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Borough of Ho-Ho-Kus, that by the adoption of this Resolution, the Borough of Ho-Ho-Kus hereby registers its OPPOSITION to H.R. 38 and S. 446, the Concealed Carry Reciprocity Act of 2017 and the Constitutional Concealed Carry Reciprocity Act of 2017.

#### #18-52 United Way Agreement

**WHEREAS**, in connection with its affordable housing obligations, the Borough of Ho-Ho-Kus has committed to cause to be constructed and operated an affordable housing structure which will provide ten (10) affordable rental housing units for family households and three (3) affordable supportive housing units for persons who are developmentally disabled (the "Project"); and

**WHEREAS**, the Project will be located at Brookside and First Street, designated as Lots 1 and 2 in Block 1015 on the Tax Assessment Map of the Borough; and

**WHEREAS**, the Borough has negotiated a Transfer and Development Agreement for the Project with Bergen County United Way/Madeline Housing Partners LLC (the "Agreement");

**NOW, THEREFORE, BE IT RESOLVED** by the Governing Body that it does hereby authorize and approve the Agreement substantially in the form currently on file in the office of the Borough Administrator;

**BE IT FURTHER RESOLVED**, that the Mayor and the Municipal Clerk are authorized to execute such Agreement following legal review.

#### #18-53 Payment of Vouchers

**WHEREAS**, claims have been submitted to the Borough of Ho-Ho-Kus in the amount of \$2,469,981.08

**WHEREAS**, such claims have been listed according to Department and account number with corresponding vouchers to be reviewed and approved by the Mayor and Council; and,

**WHEREAS**, the CFO has determined that the funds have been properly appropriated for such purposes and are available, in the Borough of Ho-Ho-Kus and that the claims specified on the schedule attached hereto, following examination and approval by the Mayor and Council, be paid and checks issued accordingly; and,

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Borough of Ho-Ho-Kus that the claims totaling \$2,469,981.08 be approved and ratified respectively

Motion: Councilmember Troast

Second: Councilmember Crossley

Abstain Councilmembers Rorty and Iannelli

Absent: Councilmember Shell.

#### OLD BUSINESS

A. Liaison Reports:

1. Recreation

Councilmember Iannelli: Wrestling season completed. Baseball season is in progress. Opening week is first week in April. Some of the travel team have already begun to play. Meeting for Recreation Association is scheduled for March 29<sup>th</sup>.

2. Board of Education

Councilmember Iannelli: Finished annual play, which was a tremendous success. There was a lot of raving reviews for all the participants and the teachers involved with the play. Members of the BOE will attend Recreation meeting to continue to work together with regards to the fields.

3. Other

a. Ambulance Corps.

Councilmember Crossley: Meet monthly. Observed how much training time and dedication is expected of the volunteers who have families to keep up with all of the CEU's. Mr. Crossley commended the Corps and stated that the Borough of Ho-Ho-Kus has one of the finest EMT's around.

b. Library

B. Shade Tree

C. Chamber of Commerce

NEW BUSINESS

MAYOR'S REMARKS

Mayor Randall commended the Police department, DPW and all the volunteers for all their hard work and dedication with the past storm.

CLOSED SESSION

None

ADJOURNMENT

With no further business to come before the Council, Mayor Randall adjourned the meeting at 8:15 PM.

Respectfully submitted,

Laura Borchers RMC/CMR  
Borough Clerk.