

ORDINANCE NO. 2026-___

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TOWNSHIP OF BERKELEY HEIGHTS, COUNTY OF UNION, STATE OF NEW JERSEY
AN ORDINANCE ESTABLISHING AN ANNUAL PILOT EDUCATION IMPACT
CALCULATION AND REPORTING REQUIREMENT, REQUIRING AN EDUCATION IMPACT
CONTRIBUTION IN FUTURE RESIDENTIAL PILOT AGREEMENTS AS A CONDITION OF
APPROVAL, AND REQUIRING AN ANNUAL SCHOOL SUPPORT APPROPRIATION POLICY
BENCHMARKED TO PILOT RECEIPTS, TO THE FULLEST EXTENT PERMITTED BY LAW

BE IT ORDAINED by the Township Council of the Township of Berkeley Heights, County
of Union, State of New Jersey, as follows:

SECTION 1. FINDINGS AND PURPOSE.

A. The Township enters into long-term tax exemption agreements and related
redevelopment financial agreements as authorized by State law ("PILOT Agreements").

B. Residential PILOT Developments may increase the number of school-age children
residing in the Township and attending public schools that serve the Township,
including the Berkeley Heights Public Schools ("BHPS").

C. The Township Council finds that residents benefit from clear, predictable, and
transparent accounting of education service impacts associated with school-age
children residing in Residential PILOT Developments.

D. The Township Council further finds that, for future Residential PILOT Agreements and
amendments, it is appropriate to negotiate and require, to the fullest extent permitted by
law, a separate education-support contribution from redevelopment entities/property

owners as part of the approval process, distinct from the statutory annual service charge required under State law.

E. The Township Council additionally finds that existing PILOT Agreements may produce municipal revenues that support municipal purposes, and that it is reasonable as a matter of municipal budget policy and transparency to establish an annual school-support appropriation benchmarked to (i) the education impact associated with Residential PILOT Developments and (ii) the Township's Net PILOT Receipts, without characterizing such appropriation as a remittance, earmark, diversion, or statutory reallocation of the annual service charge.

F. The purpose of this Ordinance is to (i) require annual calculation and public reporting of the education impact associated with Residential PILOT Developments, (ii) require that Covered PILOT Agreements include an Education Impact Contribution as a separate contractual obligation, and (iii) require an annual School Support Appropriation policy benchmarked to PILOT receipts and education impact, to the fullest extent permitted by law.

G. It is the intent of the Township Council that Education Impact Contributions be borne by redevelopment entities/property owners to the maximum extent practicable so that the obligation does not increase the local tax levy.

SECTION 2. DEFINITIONS.

For purposes of this Ordinance:

A. "PILOT Agreement" means any long-term tax exemption agreement, redevelopment entity agreement, financial agreement, or similar instrument authorized by State law and approved by the Township.

B. "Residential PILOT Development" means any property subject to a PILOT Agreement that includes residential dwelling units or permits residential occupancy.

C. "School-Age Child" means a person of school age who resides in a dwelling unit within a Residential PILOT Development and attends a public school district or regional school district that serves the Township.

D. "Student Count Date" means October 15 of each year, or if the school district serving the Township uses a different official enrollment count date recognized for reporting purposes, then the closest equivalent date used consistently from year to year.

E. "Base Per Pupil Amount" means the base per pupil amount determined by the Commissioner of Education for the previous school year pursuant to N.J.S.A. C.18A:7F-49, or any successor provision.

F. "School-Age Child Count" means the number of School-Age Children residing in a Residential PILOT Development, as of the Student Count Date, who attend a public school district or regional school district that serves the Township.

G. "Education Impact Amount" means the annual amount calculated under Section 3 using the School-Age Child Count and the Base Per Pupil Amount.

H. "Education Impact Contribution" means a separate negotiated annual payment obligation (or Special Projects obligation) required in Covered PILOT Agreements under Section 7, distinct from the statutory annual service charge.

I. "Covered PILOT Agreement" means any new PILOT Agreement, or any amendment, extension, modification, or renewal of an existing PILOT Agreement, approved by the Township on or after the effective date of this Ordinance, where the development includes residential units or permits residential occupancy.

J. "Small-Count Privacy Threshold" means fewer than five (5) School-Age Children

associated with a single Residential PILOT Development for a given reporting year, for purposes of aggregation in public reports as described in Section 4.

K. "Annual Service Charge" means the annual service charge payable to the Township pursuant to applicable State law and the applicable PILOT Agreement.

L. "Net PILOT Receipts" means, for a given calendar year, the Township's total receipts of Annual Service Charges from all PILOT Agreements less any amounts required by law to be paid to other governmental entities (including required county remittances), and less any refunds or abatements actually issued in that year.

SECTION 3. ANNUAL CALCULATION OF EDUCATION IMPACT AMOUNT.

A. Calculation Date. No later than December 1 of each year, the Township Chief Financial Officer ("CFO") shall calculate the Education Impact Amount for the upcoming calendar year based on (i) the School-Age Child Count and (ii) the Base Per Pupil Amount.

B. School-Age Child Count Certification. No later than November 15 of each year, BHPS administration shall provide the Township CFO a written certification of the number of School-Age Children residing in each Residential PILOT Development as of the Student Count Date, and shall identify, in the aggregate, any School-Age Children attending a regional district serving the Township if applicable.

C. Formula. The Education Impact Amount shall be calculated as follows:

Education Impact Amount = (Total School-Age Child Count residing in Residential PILOT Developments) × (Base Per Pupil Amount)

D. Development-Level Detail. The CFO shall calculate and retain a development-by-development breakout (school-age child counts and dollar impact) for transparency and

reporting.

SECTION 4. TRANSPARENCY; PUBLIC REPORTING; RECORDS.

A. Annual Report. By January 31 of each year, the Township shall publish on its website an annual report including:

1. Total School-Age Child Count residing in Residential PILOT Developments and development-level counts;
2. The Base Per Pupil Amount used (with school year reference);
3. The calculated Education Impact Amount and the development-level breakout;
4. For each Residential PILOT Development, whether an Education Impact Contribution was required and paid, and the amount paid and date(s) paid;
5. Total Net PILOT Receipts for the prior calendar year and a list of PILOT Agreements included in the calculation;
6. The School Support Appropriation Target Amount required under Section 8, the amount actually appropriated, and the amount actually paid; and if the appropriated amount differs, the written explanation required by Section 8;
7. Any explanation of lawful limitations relied upon, if applicable.

B. Privacy Aggregation. Where a single Residential PILOT Development has a School-Age Child Count below the Small-Count Privacy Threshold for a reporting year, the Township may aggregate such developments for public reporting purposes to protect individual privacy, provided that the Township maintains unredacted counts and calculations as internal records available for audit and OPRA as required by law, subject to lawful exemptions.

C. Records. The Township Clerk shall retain BHPS certifications, CFO calculation

worksheets, reports, proof of payments, and any related correspondence as public records in accordance with applicable retention requirements.

SECTION 5. COOPERATION FOR COUNTING AND NOTICE.

A. Township/BHPS Notice. The Township Administrator, in consultation with BHPS administration and the Township Attorney, shall prepare a standard occupant notice for Residential PILOT Developments advising that public school enrollment requires registration and that residency may be counted for purposes of the Township's annual Education Impact Amount calculation.

B. Distribution. For Covered PILOT Agreements, the developer/redevelopment entity/property owner or property manager, as applicable, shall distribute the occupant notice to new occupants and annually thereafter in a manner approved by the Township Administrator, subject to applicable privacy laws.

C. Reasonable Data Cooperation. For Covered PILOT Agreements, the developer/redevelopment entity/property owner or property manager shall reasonably cooperate with Township and BHPS requests necessary to confirm unit occupancy and to facilitate accurate counting, provided no student educational records are disclosed and any data sharing complies with applicable law.

SECTION 6. PILOT AGREEMENT ACKNOWLEDGMENT RIDER REQUIRED.

A. Standard Rider. The Township Attorney and Township Clerk shall prepare a standard rider/exhibit to be included in all Covered PILOT Agreements, including the cooperation and notice obligations in Section 5 and the Education Impact Contribution requirement in Section 7.

B. Packet Disclosure. Ordinance packets, RFPs, and draft agreement materials for Covered PILOT Agreements shall state that this Ordinance applies to residential components and requires an Education Impact Contribution and annual reporting.

SECTION 7. EDUCATION IMPACT CONTRIBUTION REQUIRED IN COVERED PILOT AGREEMENTS.

A. Condition of Approval. No ordinance approving a Covered PILOT Agreement shall be introduced for first reading unless the proposed agreement includes an Education Impact Contribution provision consistent with this Section, as approved by the Township Attorney.

A(2). Negotiating Policy and Directive. It is the express policy of the Township Council that the financial impact of new residential enrollment be borne by the redevelopment entity/property owner. The Township Administrator and redevelopment counsel are directed to negotiate an Education Impact Contribution as a material term of any proposed Covered PILOT Agreement (and, where applicable, any Community Benefit Agreement) prior to presenting such agreement to the Township Council for consideration.

B. Separate and Distinct Obligation. The Education Impact Contribution shall be a negotiated contractual obligation of the redevelopment entity/property owner (or other responsible party identified in the agreement), separate and distinct from the statutory annual service charge required under State law, and shall not be characterized as a reallocation, earmark, or diversion of the annual service charge.

C. Alternate Compliance; Satisfaction of Education Impact Obligation.

For each Covered PILOT Agreement, the agreement shall include an Education Impact Contribution obligation that shall be satisfied through one or more of the following compliance options (each a "Compliance Option"), as negotiated and approved by the Township Council and Township Attorney. The Covered PILOT Agreement shall specify the selected Compliance Option(s), the annual amount and/or valuation method, and the payment/delivery schedule.

D. Compliance Option 1 – Standard Cash Contribution (Residential Formula; State-Consistent).

For a Residential PILOT Development, the annual cash Education Impact Contribution shall equal:

(School-Age Child Count residing in that Residential PILOT Development) × (Base Per Pupil Amount for the previous school year).

Payment shall be made on the schedule stated in the agreement.

E. Compliance Option 2 – Special Projects in Lieu of Cash (Valued; Enforceable; True-Up).

In lieu of paying some or all of the annual cash contribution, the Covered PILOT Agreement may require one or more special projects benefiting BHPS, provided the agreement: (i) assigns a dollar value to each project, (ii) sets milestones and deadlines, (iii) provides inspection/acceptance procedures, (iv) states any credit amount(s), and (v) requires a cash true-up for any shortfall between the value delivered/accepted and the required annual obligation, payable within thirty (30) days after year-end (or another date approved by the Township Attorney).

F. Compliance Option 3 – Phased-In Contribution / Cap / Credit Structure.

A Covered PILOT Agreement may include a reasonable phase-in schedule, cap, and/or credits for directly funded school-impact improvements (e.g., safe routes, sidewalks, traffic controls), provided: (i) the agreement states the structure clearly, (ii) the structure includes a defined annual minimum contribution or defined ramp schedule, and (iii) all terms are disclosed in the annual report required by Section 4.

G. Compliance Option 4 – Community Benefit Agreement Equivalent.

Where the Township and Responsible Party execute a Community Benefit Agreement covering the Residential PILOT Development, the Education Impact Contribution obligation may be satisfied through that agreement, provided it includes: (i) an annual cash contribution and/or valued special projects benefiting BHPS, (ii) enforceable timelines and remedies, (iii) disclosure terms consistent with Section 4, and (iv) incorporation of Exhibit A remedies or substantially equivalent provisions approved by the Township Attorney.

H. Recipient.

Any cash contribution shall be paid to BHPS or to another lawful education-support recipient/mechanism approved by the Township Attorney.

I. Transparency.

The selected Compliance Option(s), the annual amount (or valuation method), payment dates, and project delivery status (if applicable) shall be disclosed in the annual report

required by Section 4, subject to the privacy aggregation rules in Section 4.

J. Exhibit A Required. Each Covered PILOT Agreement shall attach and incorporate Exhibit A (Education Impact Contribution and Special Projects Provisions), or substantially equivalent provisions approved by the Township Attorney, including default, interest, attorneys' fees, audit/verification, and cure periods.

SECTION 8. ANNUAL SCHOOL SUPPORT APPROPRIATION POLICY BENCHMARKED TO PILOT RECEIPTS.

A. Establishment of Annual School Support Appropriation. Beginning with the first municipal budget adopted after the effective date of this Ordinance, the Township shall include a distinct line item appropriation titled "BHPS PILOT School Support Appropriation" (or substantially similar title).

B. Target Amount. For each budget year, the CFO shall compute a "School Support Appropriation Target Amount," which shall be the lesser of:

1. the Education Impact Amount calculated under Section 3 for that year; or
2. an amount equal to twenty-five percent (25%) of the Township's Net PILOT Receipts for the most recently completed calendar year.

C. Council Action and Public Accountability. The Township Administrator and CFO shall include the computed Target Amount in the proposed municipal budget submitted to the Township Council. The Township Council shall, to the fullest extent permitted by law, appropriate and pay the Target Amount.

D. If Not Fully Appropriated. If the Township Council appropriates less than the Target Amount for any year, the Council shall adopt, in open session, a resolution stating:

1. the Target Amount;
2. the amount appropriated;
3. the reason(s) for the difference; and
4. the alternative steps (if any) the Township will take that year to address the gap.

E. Payment Schedule. Upon adoption of the municipal budget containing the appropriation, the Township shall pay BHPS (or other lawful education-support recipient/mechanism approved by the Township Attorney) in two equal installments on or about March 1 and September 1 of that year, or as otherwise required by lawful disbursement procedures.

F. No Recharacterization. This appropriation is a municipal budget policy and shall not be characterized as a remittance, earmark, diversion, or statutory reallocation of the Annual Service Charge; it shall be paid from lawful municipal appropriations.

G. Relationship to Education Impact Contributions. Amounts actually received by BHPS (or the lawful recipient/mechanism) from Education Impact Contributions or Special Projects under Covered PILOT Agreements may be disclosed separately and shall not reduce the Township's reporting obligations under Section 4.

SECTION 9. NO PRIVATE RIGHT OF ACTION.

This Ordinance is intended to establish Township duties and transparency requirements and shall not be construed to create a private right of action for money damages.

SECTION 10. SEVERABILITY; CLOSEST LAWFUL ALTERNATIVE.

If any section, subsection, sentence, clause, or phrase of this Ordinance is held invalid or unenforceable, the remaining portions shall not be affected. The Township shall

implement the remaining portions and, where a mechanism is invalidated, shall use the closest lawful alternative mechanism that most closely achieves the intent of ensuring education-impact support associated with Residential PILOT Developments.

SECTION 11. EFFECTIVE DATE.

This Ordinance shall take effect upon final passage and publication as required by law.

EXHIBIT A

EDUCATION IMPACT CONTRIBUTION AND SPECIAL PROJECTS PROVISIONS

(For Inclusion in Covered PILOT Agreements)

1. DEFINITIONS.

- A. "Ordinance" means Ordinance No. 2026-___ of the Township of Berkeley Heights establishing the Education Impact Contribution framework.
- B. "Residential PILOT Development" has the meaning set forth in the Ordinance.
- C. "School-Age Child Count" has the meaning set forth in the Ordinance.
- D. "Student Count Date" has the meaning set forth in the Ordinance.
- E. "Base Per Pupil Amount" has the meaning set forth in the Ordinance.
- F. "Education Impact Contribution" means the annual amount payable under this Exhibit A.
- G. "School District" means the Berkeley Heights Public Schools ("BHPS"), and any successor entity serving the Township for K-8, as applicable.

2. SEPARATE CONTRACTUAL OBLIGATION; NO RECHARACTERIZATION.

A. The Education Impact Contribution is a negotiated contractual obligation of the Redevelopment Entity/Owner (“Responsible Party”), separate and distinct from the statutory annual service charge required under State law and the parties’ long-term tax exemption/financial agreement.

B. The Education Impact Contribution shall not be characterized as a reallocation, earmark, diversion, or remittance of the statutory annual service charge.

3. ANNUAL CALCULATION (RESIDENTIAL).

A. For each Contribution Year, the Education Impact Contribution shall equal:
(School-Age Child Count residing in the Residential PILOT Development) × (Base Per Pupil Amount for the previous school year).

B. Count and Certification.

1) No later than fifteen (15) days after the Student Count Date, the Responsible Party shall provide the Township Administrator and School District a written certification identifying:

(a) the number of occupied residential units; and

(b) a unit roster by unit identifier (unit number or equivalent) sufficient to support enrollment verification and accurate counting, without disclosure of student educational records.

2) No later than November 15 of each year, the School District shall provide the Township CFO a written certification of the School-Age Child Count associated with the Residential PILOT Development as of the Student Count Date.

3) The Township CFO shall determine the Base Per Pupil Amount for the prior school year and shall issue a written calculation notice of the Education Impact Contribution to

the Responsible Party no later than December 1 of each year.

4. PAYMENT SCHEDULE AND METHOD.

A. The Education Impact Contribution shall be paid in two equal installments for each Contribution Year:

- 1) First installment due on or before March 1; and
- 2) Second installment due on or before September 1.

B. Payments shall be made by check or electronic transfer as directed by the Township and/or the School District's designated lawful recipient/mechanism, as applicable.

C. The Responsible Party's obligation to pay is not conditioned on the Township's receipt of the annual service charge and is independent of any separate dispute unrelated to this Exhibit A.

5. SPECIAL PROJECTS ALTERNATIVE (OPTIONAL; MUST BE VALUED; CASH TRUE-UP).

A. In lieu of paying some or all of the Education Impact Contribution for a Contribution Year, the parties may agree in writing to one or more Special Projects benefiting the School District.

B. Any Special Projects agreement must:

- 1) assign a dollar value to each project;
- 2) establish delivery milestones and completion deadlines;
- 3) specify inspection/acceptance procedures;
- 4) state whether the project value is a credit against the Education Impact Contribution and in what amount; and
- 5) provide that any shortfall between the Education Impact Contribution owed and the

Special Projects value delivered/accepted by December 31 of the Contribution Year shall be paid in cash within thirty (30) days as a “true-up” payment.

6. RECORDS; AUDIT/VERIFICATION; PRIVACY.

A. The Responsible Party shall maintain occupancy and unit roster records reasonably sufficient to support the certification obligations in Section 3.B for at least seven (7) years and shall provide such records to the Township upon reasonable request for audit/verification purposes, subject to applicable privacy laws.

B. Nothing in this Exhibit A requires disclosure of student educational records, and all parties shall handle resident/unit information consistent with applicable law.

7. EVENT OF DEFAULT; NOTICE AND CURE.

A. The following constitute Events of Default:

- 1) Failure to pay any installment within ten (10) days after its due date;
- 2) Failure to provide required certifications within the timelines stated herein, if not cured within ten (10) days after written notice;
- 3) Material misrepresentation in any certification, calculation submission, or record provided under this Exhibit A.

B. Notice and Cure. The Township shall provide written notice of default. The Responsible Party shall have ten (10) days to cure a monetary default and twenty (20) days to cure a non-monetary default (or such longer period as may be reasonably necessary if cure is commenced within twenty (20) days and diligently pursued).

8. INTEREST; LATE FEES; COLLECTION COSTS.

A. Interest. Any unpaid amount shall accrue interest at the rate of one percent (1.0%) per month (or the maximum rate permitted by law, if lower) from the due date until paid in full.

B. Collection Costs. The Responsible Party shall pay all reasonable attorneys' fees and costs incurred by the Township and/or the lawful recipient in collecting overdue amounts.

9. REMEDIES; CUMULATIVE RIGHTS.

A. In addition to any other remedies available at law or equity, upon an uncured Event of Default the Township may:

- 1) pursue collection by suit;
- 2) require specific performance of recordkeeping/certification obligations; and/or
- 3) exercise any remedies expressly provided under the PILOT Agreement/financial agreement for breach, to the extent permitted by law and the terms of that agreement.

B. Remedies are cumulative and not exclusive.

10. NO WAIVER.

Failure to enforce any provision shall not constitute a waiver of the right to enforce the same or any other provision.

11. SURVIVAL; RUNS WITH PROJECT OBLIGATION.

A. The obligations in this Exhibit A shall be binding on the Responsible Party and its successors and assigns to the extent permitted by law and as provided in the PILOT Agreement.

B. The Responsible Party shall cause any property manager engaged for the Residential PILOT Development to comply with the notice/distribution obligations required by the PILOT Agreement rider and Ordinance.

12. SEVERABILITY.

If any provision of this Exhibit A is held invalid, the remaining provisions shall remain in full force and effect to the maximum extent permitted by law.