

**TOWNSHIP OF BORDENTOWN**

**AN ORDINANCE OF THE TOWNSHIP OF BORDENTOWN ESTABLISHING  
"GROWTH SHARE" APPROACH FOR AFFORDABLE-HOUSING**

**ORDINANCE NO. 2006-20**

**PURPOSE**

**WHEREAS**, the New Jersey Supreme Court and New Jersey Legislature have recognized and mandated in *So. Burl. Co. NAACP v. Mount Laurel*, 92 N.J. 158 (1983) ("*Mount Laurel I*") and the Fair Housing Act, N.J.S.A. 52:27D-301, *et seq.* ("FHA") that every municipality in New Jersey has an affirmative obligation to facilitate the provision of affordable-housing; and

**WHEREAS**, the New Jersey Council on Affordable-Housing ("COAH") is the State administrative agency created pursuant to the FHA vested with primary jurisdiction for the administration of affordable-housing obligations in accordance with sound regional planning considerations in New Jersey; and

**WHEREAS**, COAH's Third Round Substantive Rules (N.J.A.C. 5:94-1 *et seq.*) implement a "growth share" approach to affordable-housing production which requires affordable-housing to be produced in conjunction with market-rate residential and nonresidential growth and development within the Bordentown Township; and

**WHEREAS**, Bordentown Township desires to implement the "growth share" policies promulgated by COAH in its Third Round Substantive Rules in an effort to foster the production of affordable-housing opportunities for qualified low and moderate income households through COAH's third round, which extends from 1999 to 2014.

**NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED** by the Township Committee of the Township of Bordentown that the Land Development Ordinance of the Township of Bordentown, Chapter 25, be and is hereby amended as follows:

**Zoning District Regulations**

**Section 1. The following new Section is hereby added to Bordentown Township's Land Use Ordinance, to read as follows:**

**25:1114**

**Applicability**

- A. This subsection of the land-use regulations of Bordentown Township sets forth mechanisms by which developers shall provide for a fair share of affordable-housing based on growth that is associated with development taking place within Bordentown Township.

- B. Residential Development. Except as exempted in the subsection "Exemptions" below, all residential development in the Redevelopment Overlay (RD) zone and the Medium Density Residential (R-30) zone that results in the construction of new market-rate dwelling units in accordance with *N.J.A.C. 5:94-1 et seq.*, shall be subject to the "growth share" provisions of this ordinance.
- C. Non-residential development. Except as exempted in subsection § X-2, all non-residential development in the Redevelopment Overlay (RD) zone and the Medium Density Residential (R-30) zone that results in an increase in gross floor area of any existing non-residential structure or the construction of a new non-residential structure in accordance with *N.J.A.C. 5:94-1 et seq.*, shall be subject to the "growth share" provisions of this ordinance.

### § X-2 Exemptions

- A. Developments that received preliminary or final approval from the Planning Board and/or Board of Adjustment, as applicable, prior to the effective date of this ordinance.

### § X-3 Residential Growth Share Provisions

- A. All residential development which results in the construction of new market-rate dwelling units in Bordentown Township in the Redevelopment Overlay (RD) zone and the Medium Density Residential (R-30) zone shall provide one affordable unit on-site for every eight market rate units constructed.
- B. For developments that result in a number of market-rate residential units not evenly divisible by eight, the developer may construct the additional affordable unit on-site or alternatively, the developer may make a payment in lieu of constructing the additional affordable unit. If the developer selects the latter option, the amount of said payment shall be established by subtracting any whole multiples of eight from the total number of market-rate residential units being created, dividing any remaining number of units by eight and multiplying fraction by \$170,000.00.
- C. All residential development in the Redevelopment Overlay (RD) zone and the Medium Density Residential (R-30) zone consisting of less than eight residential units may provide one affordable unit on-site or may make a payment in lieu of constructing the proportionate fraction of the affordable-housing unit required. If the developer selects the latter option, the amount of said payment shall be established by dividing the number of market-rate units by eight and multiplying the resulting fraction by \$170,000.00.

- D. As an alternative to fulfilling the affordable-housing requirements set forth in A. through C. above, developers of residential units in the Redevelopment Overlay (RD) zone and the Medium Density Residential (R-30) zone may elect to construct an affordable-housing unit elsewhere in Bordentown Township subject to review and approval of the Planning Board and Township Committee.
- E. All residential development not subject to the provisions of A. through D. above shall be subject to the provisions of development fees as set forth in Ordinance 2005-6.

#### **§X-4 Non-Residential Growth Share Provisions**

- A. All non-residential developments in the Redevelopment Overlay (RD) zone and the Medium Density Residential (R-30) shall provide one unit of affordable-housing for every 25 jobs created by new or expanded development. Determinations of the number of jobs created shall be based on the new or expanded floor area in the development and the conversion factors, by use group, published by COAH as Appendix E in *N.J.A.C. 5:94-1 et seq.*
- B. Except as set forth in C. below, non-residential developers in the Redevelopment Overlay (RD) zone and the Medium Density Residential (R-30) zone shall construct an affordable-housing unit elsewhere in Bordentown Township subject to review and approval of Planning Board and Township Committee.
- C. As an alternative to fulfilling the affordable-housing requirements set forth in B. above, the non-residential developer may make a payment in lieu of constructing the affordable units. The amount of said payment shall be determined by establishing the number of jobs to be created in a development by using the conversion factors published by COAH as Appendix E in *N.J.A.C. 5:94-1 et seq.*, dividing by 25 to determine the number of affordable-housing units required and multiplying the resulting figure by \$170,000.00.
- D. For developments that result in a number of jobs not evenly divisible by 25, the developer may construct the additional affordable unit off-site in accordance with subsection B above or alternatively, the developer may make a payment in lieu of constructing an additional affordable unit in accordance with subsection B above. If the developer selects the latter option, the amount of said payment shall be established by subtracting any whole multiples of 25 from the total number of jobs being created, dividing any remaining number of jobs by 25 and multiplying the resulting fraction by \$170,000.00.
- E. All non-residential development in the Redevelopment Overlay (RD) zone and the Residential Medium Density (R-30) zone creating less than 25 jobs may provide one affordable unit off-site in accordance with subsection B above or may make a payment in lieu of constructing an affordable-housing unit. If the developer selects

the latter option, the amount of said payment shall be established by dividing the number of jobs by 25 and multiplying the resulting fraction by \$170,000.00.

- F. All nonresidential development not subject to the provisions above shall be subject to the provisions of development fees as set forth in Ordinance 2005-6.

#### **Mixed Use Development in Redevelopment Overlay (RD) Zone Growth Share Provisions**

- A. When mixed-use development is proposed in the Redevelopment Overlay (RD) zone, residential development shall provide one affordable-housing unit on-site for every eight market-rate units.
- B. Non-residential development in the Redevelopment Overlay (RD) zone shall provide one affordable-housing unit on-site for every 25 jobs created by new or expanded development. Determinations of the number of jobs created shall be based on the new or expanded floor area in the development and the conversion factors, by use group, published by COAH as Appendix E in *N.J.A.C. 5:94-1 et seq.* Affordable units may be part of or included within a mixed use structure or may be constructed in a separate building(s) on the same site.
- C. For mixed-use developments in the Redevelopment Overlay (RD) zone that result in a fractional affordable-housing obligation, the developer may construct the additional affordable unit on-site or alternatively, the developer may make a payment in lieu of constructing the additional affordable unit only. The amount of said payment for non-residential development shall be determined by establishing the number of jobs to be created in a development by using the conversion factors published by COAH as Appendix E in *N.J.A.C. 5:94-1 et seq.*, subtracting any whole multiples of 25 from the total number of jobs being created, dividing any remaining number of units by 25 and multiplying the resulting fraction by \$170,000.00. The amount of said payment for residential development shall be determined by subtracting any whole multiples of eight from the total number of market-rate residential units being created, dividing any remaining number of units by eight and multiplying the resulting fraction by \$170,000.00.

#### **General Provisions for Constructing Affordable Units**

- A. Affordable-housing units being constructed on-site or off-site shall be in conformance with COAH's third round rules at *N.J.A.C. 5:94-1 et seq.* and the Uniform Housing Affordability Controls at *N.J.A.C. 5:80-26.1 et seq.*, including, but not limited to, requirements regarding phasing schedule, controls on affordability, low/moderate income split, heating source, maximum rent and/or

sales prices, affordability average, bedroom distribution, and affirmative marketing.

- B. To the greatest extent possible, affordable-housing units being provided within inclusionary developments shall be disbursed throughout inclusionary developments and shall be located within buildings designed to be architecturally indistinguishable from the market-rate units otherwise being constructed within the development. To that end, the scale, massing, roof pitch and architectural detailing (such as the selection of exterior materials, doors, windows, etc.) of the buildings containing the affordable- housing units shall be similar to and compatible with that of the market-rate units.
- C. Affordable-housing units shall be subject to the bulk standards set forth by the underlying zoning in Section

#### **Payment-in-Lieu Provisions**

- A. Any payment in lieu amount of \$170,000.00 shall be derived from the analysis of the subsidy required to create an affordable-housing unit in Bordentown Township, which analysis shall be on file in the office of the Municipal CFO.
- B. All payments in lieu of constructing affordable-housing shall be deposited by Bordentown Township into an affordable-housing trust fund to be established by Bordentown Township in conformance with regulations established by COAH and shall at all times be identifiable from development fees. These funds shall be used by Bordentown Township in accordance with regulations established by COAH and the Court to create new affordable-housing opportunities within the physical boundaries of Bordentown Township.

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Mark Roselli, Mayor

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Colleen M. Eckert, Twp. Clerk