

Ordinance Number 17-2022
Amendments to the Affordable Housing Ordinance
City of Lambertville, Hunterdon County

AN ORDINANCE AMENDING CERTAIN SECTIONS, AS SPECIFIED BELOW, OF THE CITY OF LAMBERTVILLE LAND DEVELOPMENT REVIEW ORDINANCE, ARTICLE XII AFFORDABLE HOUSING, SECTION LDR-1200, “AFFORDABLE HOUSING ORDINANCE,” TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) REGARDING COMPLIANCE WITH THE CITY’S AFFORDABLE HOUSING OBLIGATIONS

WHEREAS the State of New Jersey has a longstanding and well-established commitment to maximizing the opportunities for the development of housing affordable for very-low-, low-, and moderate-income households; and

WHEREAS the provision of “safe, decent and attractive housing that [very-low-, low-, and moderate-income households] can afford serves the community’s interest in achieving an integrated, just and free society and promotes the general welfare of all citizens.” De Simone v. Greater Englewood Hous. Corp., 56 N.J. 428, 441 (1970); and

WHEREAS notably, in the Mount Laurel decisions, the New Jersey Supreme Court held that the State’s Constitution makes it “plain beyond dispute that proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare required in all local land use regulations.” S. Burlington Cty. NAACP v. Mount Laurel, 67 N.J. 151, 179 (1975) (Mount Laurel I); and

WHEREAS the Court thus found that “each ... municipality [must] affirmatively ... plan and provide, by its land use regulations, the reasonable opportunity for an appropriate variety and choice of housing, including, of course, low and moderate cost housing, to meet the needs, desires and resources of all categories of people who may desire to live within its boundaries.” Ibid.; and

WHEREAS since then, New Jersey’s courts have consistently recognized that “[t]he public policy of this State has long been that persons with low and moderate incomes are entitled to affordable housing ... ‘There cannot be the slightest doubt that shelter, along with food, are the most basic human needs.’” Homes of Hope, Inc. v. Eastampton Tp. Land Use Planning Bd., 409 N.J. Super. 330, 337 (App. Div. 2009) (quoting Mount Laurel I, 67 N.J. at 178); and

WHEREAS the New Jersey Legislature itself affirmed this commitment when it enacted the Fair Housing Act of 1985, which established that it is in the State’s interest “to maximize the number of low and moderate units by creating new affordable housing and by rehabilitating existing, but substandard, housing in the State.” N.J.S.A. 52:27D-302; and

WHEREAS accordingly, the New Jersey Supreme Court has determined that “[a]ffordable housing is a goal that is no longer merely implicit in the notion of the general welfare. It has been expressly recognized as a governmental end and codified under the FHA.” Holmdel Builders Ass’n v. Holmdel, 121 N.J. 550, 567 (1990).

NOW THEREFORE BE IT ORDAINED by the Council of the City of Lambertville, Hunterdon County, New Jersey, that the following Sections of Chapter LDR Land Development Review, Article XII Affordable Housing, Section LDR-1200 Affordable Housing Ordinance are hereby amended as specified below, in order to address the City of Lambertville's constitutional obligation to provide for its fair share of very low-, low- and moderate-income housing, as directed by the Superior Court and consistent with *N.J.A.C. 5:93-1, et seq.*, as amended and supplemented, *N.J.A.C. 5:80-26.1, et seq.*, as amended and supplemented, and the New Jersey Fair Housing Act of 1985. This Ordinance is intended to provide assurances that 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 those units.

SECTION 1: SECTION LDR-1200.6. shall be amended to read as follows (additions in **bold** and deletions in ~~strikethrough~~):

Section LDR-1200.6 City-wide Mandatory Set-Aside

1. Purpose. The purpose of this mandatory affordable housing set-aside ordinance is two-fold:
 - a. One, ensure that multi-family residential development or combined multi-family residential/non-residential development, providing a minimum of five (5) new housing units at a density of six (6) or more units per acre that results from a rezoning, variance, redevelopment plan, rehabilitation plan, or other zoning or land use incentive produces affordable housing at an appropriate set-aside rate of twenty percent (20%), consistent with applicable law; and
 - b. Two, ensure consistent with the New Jersey Supreme Court's directives in Mount Laurel II, that opportunities for affordable housing are captured as land becomes available for development and redevelopment (including as a result of private acquisition or assembly of a tract, fires and the resulting demolition of structures, and redevelopment, either public or private) within the boundaries of the City, which has an unmet need obligation, see S. Burlington Cty. NAACP v. Mount Laurel, 92 N.J. 158, 248 n.21 (1983) (Mount Laurel II) and the Court's decision with regards to the initial Fairness and Compliance Hearing held before the Court on September 13, 2018 and the Consent Order Approving Amended Settlement and Agreement and Conditional Judgment of Mount Laurel Compliance and Repose entered June 23, 2020, in In the Matter of the City of Lambertville, County of Hunterdon, Docket No. HNT-L-311-15.
2. Applicability of Mandatory Affordable Housing Set-Aside. This mandatory affordable housing set-aside ordinance shall apply as follows:
 - a. A minimum affordable housing set-aside of 20% shall be required to be included within a development, except as noted herein, throughout the entirety of the

municipality when a multi-family residential, or combined multi-family residential/non-residential development, providing a minimum of five (5) new housing units at a density of six (6) or more units per acre, is created through:

- (i) a municipal rezoning permitting multi-family housing where not previously permitted; or
- (ii) the granting of a “D” variance pursuant to NJS 40:55D-70.d (e.g., use variance, density variance); or
- (iii) a new or amended redevelopment plan or rehabilitation plan.

b. Within the lands **bound** between the Delaware River to the west, the municipal boundary to the south, and the lands to the east bound by eastern right-of-way of N.J.S.H. Route 29, the eastern right-of-way of Route 165, the eastern right-of-way of N.J.S.H. Route 179, Washington Street between N.J.S.H. Route 179 and York Street, the eastern right-of-way of North Franklin Street, the southern lot line of Block 1002, Lot 43 (Ely Field), the eastern right-of-way of North Main Street (N.J.S.H. Route 29), and the municipal boundary to the north, and also including the tax lots between North Franklin Street and where York Street intersects with Washington Street (Block 1002, Lots 58 through 63), and the tax lots immediately east of North Franklin Street between York Street and Block 1002, Lot 43 (Ely Field) (Block 1002, Lots 45.01, 45.02, and 46 through 57), any residential development, except as noted herein, providing a minimum of five (5) new housing units at a density of six (6) or more units per acre that requires site plan or subdivision approval shall provide a minimum affordable housing set-aside of 20%, to be included within the development.

- (i) A developer subject to this mandatory affordable housing set-aside ordinance may request, and the approving authority at its discretion may grant, additional incentives for the production of affordable housing, including but not limited to increased density, an increase in the maximum permitted number of dwelling units within a building, and/or a reduction in the off-street parking spaces otherwise required.

- 3. Exemptions. This mandatory affordable housing set-aside ordinance shall not apply to sites already zoned for inclusionary residential development with an affordable housing set-aside or for which an inclusionary residential redevelopment plan has been adopted consistent with the City’s Court-approved Housing Plan Element and Fair Share Plan, adopted in accordance with the settlement agreement with Fair Share Housing Center, which sites shall comply with the applicable adopted zoning.
- 4. Other Terms Applicable. The following terms shall apply to Lambertville’s mandatory affordable housing set-aside ordinance:

- a. All subdivision and site plan approvals of qualifying developments identified in §1200-6.2.a and §1200-6.2.b shall be conditioned upon compliance with the provisions of this mandatory affordable housing set-aside ordinance.
- b. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. A developer may not, for example, subdivide a project into two lots and then plan each of them to produce a number of units just below the threshold.
- c. In the event the number of affordable housing units to be provided includes a fraction, the number shall be rounded up if the fractional amount is 0.5 or greater and rounded down if the fractional amount is less than 0.5. The developer shall provide a payment in lieu of constructing affordable units for the fraction of a unit less than 0.5.
- d. All affordable units created shall fully comply with Chapter LDR Land Development Review, Article XII Affordable Housing, Sections LDR-1200.7 through LDR-1200.25.
- e. This requirement shall not give any developer the right to any such rezoning, variance, redevelopment designation or redevelopment or rehabilitation plan approval, or any other such relief, or establish any obligation on the part of the City to grant such rezoning, variance, redevelopment designation, redevelopment or rehabilitation plan approval, or other such or further relief.
- f. No developer may make a payment in lieu of constructing affordable units on site, except for fractional units as noted in Paragraph c, above.

SECTION 2: A copy of this ordinance shall be referred to the Lambertville Planning Board following its introduction for review pursuant to N.J.S.A. 40A:55D-26A.

SECTION 3: If any article, section, paragraph, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect and shall be deemed valid and effective.

SECTION 4: In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the City of Lambertville, the provisions hereof shall be determined to govern and those inconsistent provisions shall be repealed to the extent of such inconsistency.

SECTION 5: This ordinance shall take effect upon its passage and publication, filing with the Hunterdon County Planning Board, and as otherwise provided for by law.

SECTION 6. The provisions of this Ordinance shall be applicable within the entire City of Lambertville upon final adoption and shall become a part of the Lambertville Code once completed and adopted.

FIRST READING AND INTRODUCTION: June 16, 2022

SECOND READING AND PUBLIC HEARING: July 21, 2022