

Introduced: January 24, 2022
Adopted: February 28, 2022

ORDINANCE NO. 2022-2

TOWNSHIP OF EASTAMPTON
BURLINGTON COUNTY

AN ORDINANCE AMENDING CHAPTER 540 OF THE TOWNSHIP CODE FOR
MANDATORY AFFORDABLE HOUSING SET-ASIDES

Chapter 540 Zoning is revised with the addition of new section 540-11.U.

Section 540-11 Regulations applicable to all districts.

U. Mandatory affordable housing set-aside.

- (1) Background. 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.

The provision of “safe, decent and attractive housing that [lower-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).

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 regulation.” S. Burlington Cty. NAACP v. Mount Laurel, 67 N.J. 151, 179 (1975) (Mount Laurel I).

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.

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.

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).

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,” and furthermore that those policies do not end when a municipality has satisfied its minimum obligation under the FHA because “[t]here 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).

- (2) Affordable housing set-aside.
 - (a) A mandatory affordable housing set-aside requirement shall apply to any residential development, including the residential portion of a mixed-use project, which consists of five (5) or more new residential units at six (6) or more units per acre and that results from any use or density variance pursuant to N.J.S.A. 40:55D-70(d).
 - (b) A mandatory affordable housing set-aside requirement shall apply to any residential development, including the residential portion of a mixed-use project, which consists of fifty (50) or more new residential units at six (6) or more units per acre that results from any rezoning or the adoption of a new or amended redevelopment/rehabilitation plan.
 - (c) The set-aside shall be twenty percent (20%) where the affordable units are provided for for-sale and fifteen percent (15%) where the affordable units are provided for rental.
- (3) Additional Incentives for Affordable Housing. A developer subject to the mandatory affordable housing set-aside may request, and the appropriate approving authority may, at its discretion, grant additional incentives for affordable housing including, but not limited to, a density bonus, a reduction in the off-street parking spaces otherwise required, and/or a reduction in the minimum setback requirements.
- (4) Other Terms Applicable. The following terms shall apply to any residential development subject to the mandatory affordable housing set-aside:
 - (a) All subdivision and site plan approvals of qualifying developments shall be conditioned upon compliance with the provisions of the mandatory affordable housing set-aside.

- (b) No subdivision shall be permitted or approved for the purpose of avoiding compliance with the mandatory affordable housing set-aside. A developer may not, for example, subdivide a project into two lots and then plan each of them to produce a number of units below the threshold. The approving authority may impose any reasonable conditions to ensure such compliance.
- (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. The payment in lieu shall be based on the amounts established in N.J.A.C. 5:97-6.4(c).
- (d) All affordable units created shall fully comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. (“UHAC”), including but not limited to the required bedroom and income distribution, with the sole exception that thirteen percent (13%) of the affordable units shall be required to be restricted for very-low-income households earning thirty percent (30%) or less of the median income pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (“FHA”).
- (e) At least fifty percent (50%) of the affordable units within each bedroom distribution shall be affordable to low-income households, inclusive of the at least thirteen percent (13%) of units affordable to very-low-income households.
- (f) The very-low-income affordable units shall be proportionately distributed within each bedroom distribution. In a family non-age-restricted development, at no time shall the number of one-bedroom very-low-income units exceed the number of three-bedroom very-low-income units.
- (g) Affordable units shall be integrated with the market-rate units on-site, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) from the market-rate units. In buildings with multiple dwelling units, this shall mean that the affordable units shall be generally distributed within each building with market-rate units. The affordable units shall also be of the same type as the market-rate units (e.g., if the market-rate units are non-age-restricted family units, the affordable units shall be non-age-restricted family units as well). The residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market-rate units.
- (h) Affordable units shall be subject to affordability controls of at least thirty (30) years from the date of initial occupancy and affordable deed restrictions as otherwise provided for by UHAC, with the sole exception that very low income shall be defined as at or below thirty percent (30%) of median


income pursuant to the Fair Housing Act, and the affordability controls shall remain unless and until the municipality, in its sole discretion, takes action to extend or release the unit from such controls after at least thirty (30) years.

- (i) Construction of the affordable and market units shall be phased in compliance with N.J.A.C. 5:93-5.6(d).
 - (j) Affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.
 - (k) The mandatory affordable housing set-aside shall not give any developer the right to any rezoning, variance, redevelopment designation or redevelopment or rehabilitation plan approval, or any other such relief, or establish any obligation on the part of the municipality to grant such rezoning, variance, redevelopment designation, redevelopment or rehabilitation plan approval, or other such or further relief.
 - (l) No developer may make a payment in lieu of constructing affordable units on site, except for fractional units as noted above.
 - (m) Nothing herein precludes the municipality from imposing an affordable housing set-aside in a development not required to have a set-aside pursuant to these provisions.
- (5) Severability. If any article, section, 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.
- (6) Inconsistencies. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the municipality, the provisions hereof shall be determined to govern and those inconsistent provisions shall be repealed to the extent of such inconsistency.
- (7) Referral to Land Use Board. A copy of this Ordinance shall be referred to the Land Use Board following its introduction for review pursuant to N.J.S.A. 40A:55D-26A.

(8) Effective Date and Scope. This Ordinance shall take effect upon its passage and publication, filing with the Burlington County Planning Board, and as otherwise provided for by law. The provisions of this Ordinance shall be applicable within the entire municipality upon final adoption and shall become a part of the Code once completed and adopted.

Adoption: February 28, 2022

ATTEST:


 KIM-MARIE WHITE
 Municipal Clerk


 ANTHONY ZENO
 Mayor

Introduction: January 24, 2022

Council	Motion	2 nd	Ayes	Nays	Abstain	Absent
Councilman Apgar			✓			
Councilman Besko		✓	✓			
Councilman Santillo	✓		✓			
Councilman Springer			✓			
Mayor Zeno			✓			
		VOTE	5	0		

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