

TOWNSHIP OF UPPER

CAPE MAY COUNTY

ORDINANCE

ORDINANCE NO. 001 -2009

**RE: AMENDING AND SUPPLEMENTING CHAPTER XX FOR
INCLUSIONARY AFFORDABLE HOUSING OVERLAY**

Explanation: Revised Ordinance Standards updated to comply with September 22, 2008 COAH rules concerning inclusionary development. This Ordinance replaces Ord. #020-2006.

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 II”) 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-priced residential and nonresidential growth and development within the Township of Upper; and

WHEREAS, the Township of Upper intends 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 2004 to 2018.

NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED by the Township Committee of the Township of Upper that the Zoning Chapter XX of the

Township of Upper be and is hereby amended as follows:

The following Section 20 -14 entitled “ Inclusionary Affordable Housing Overlay “ is hereby added to replace the existing Section 20-14 entitled “Growth Based Affordable Housing” of the Township of Upper’s Zoning Ordinance, to read as follows:

§20- 14 Inclusionary Affordable Housing Overlay

§20- 14.1 Applicability

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

b. Except as exempted in §20-14.2, all residential development that results in the construction of new market-priced dwelling units in accordance with N.J.A.C. 5:94-1 et seq., shall be subject to the “inclusionary affordable housing ” provisions of this ordinance.

§ 20-14.2 Exemptions

The following are exempted from the provisions of this Chapter:

a. Developments that received preliminary or final subdivision approval from the Planning Board and/or Zoning Board of Adjustment, as applicable, prior to the effective date of this ordinance except as required by conditions of approval.

b. Residential developments that have been zoned to produce an affordable housing set-aside greater than the affordable housing requirements of this Article or that are intended to include only low and moderate income housing units.

c. Residential development that results in less than four market-priced dwelling units; with the provision that any future subdivision of this development which results in four or greater units including units previously subdivided shall be subject retroactively to this inclusionary affordable housing ordinance.

d. As to exemptions c. above, these types of development shall be subject to the developer fee ordinance.

e. Public facilities and public schools.

- f. Not-for-profit facilities including churches and private universities.

§ 20-14.3 Inclusionary Affordable Housing Overlay Provisions

a. All residential development which results in the construction of four or more new market-priced dwelling units shall provide non-age restricted affordable housing units at a ratio of one affordable unit for every four market-priced units constructed on-site.

b. For developments that result in a number of market-priced residential units not evenly divisible by four, 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 four from the total number of market-priced residential units being created, dividing any remaining number of units by four and multiplying the resulting fraction by the established affordable unit cost to construct one affordable residential unit as established by region in N.J.A.C. 5:97G.4(c)3. as revised periodically by COAH.

c. As an alternative to fulfilling the affordable housing requirements set forth in a. and b. above, developers of residential units may elect to provide affordable housing units off-site within existing buildings, but within the Township of Upper in accordance with §20-14.4 and §20-14.5. If the developer elects to provide the affordable unit off-site but within the Township of Upper, each on-site unit otherwise required to be affordable to a low or moderate income household may be converted to a market-priced unit, but the developer's inclusionary housing obligation shall be increased accordingly and reflected in the number of units being constructed off-site but within the Township.

d. All residential development subject to the provisions of a. through c. above shall be provided with a density increase as mandated by current New Jersey Council of Affordable Housing substantive rules under 5:97-6.4 which established the minimum presumptive density and affordable housing obligation for municipalities.

e. All residential development not subject to the provisions of a. through c. above shall be subject to the provisions of development fees as set forth in the

Development Fee Ordinance.

f. The following increased density standards apply depending upon the existing density and the availability of public sewer or advanced on site sewerage treatment facilities (sewered areas) to accommodate density as proposed:

1. For residential zones within sewered areas in PA2 and Centers, the residential density shall be increased to a maximum of six (6) dwelling units per acre. The minimum yard requirements shall be reduced by up to 20% of the minimum required dimensions to accommodate the additional density with the single family attached buildings. The maximum building coverage and maximum impervious coverage shall be increased by 20% over the base coverage requirements to accommodate the additional density on an individual lot basis.

2. For residential zones outside of sewered areas in PA2 and Centers, the residential density shall be increased to a maximum of four (4) dwelling units per acre. The minimum yard requirements shall be reduced by up to 20% of the minimum required dimensions to accommodate the additional density with the single-family attached buildings. The maximum building coverage and maximum impervious coverage shall be increased by 20% over the base coverage requirements to accommodate the additional density on an individual lot basis.

3. For residential zones within non-sewered areas (conventional on site septic systems) in PA3, PA4, and PA5, the residential density shall be increased by 40% over the maximum density permitted in the zone. The minimum yard requirements shall be reduced by up to 20% of the minimum required dimension to accommodate the additional density with the single family attached buildings. The maximum building coverage and maximum impervious coverage shall be increased by 20% over the base coverage requirements to accommodate the additional density on an individual lot basis.

4. For residential zones within non-sewered areas (conventional on site septic systems) in the Pinelands Management Area, the residential density shall be increased by 40% over the maximum density permitted in the zone. The minimum yard requirements shall be reduced by up to 20% of the minimum required dimension to accommodate the additional density with the single family attached buildings. The

maximum building coverage and maximum impervious coverage shall be increased by 20% over the base coverage requirements to accommodate the additional density on an individual lot basis.

5. In the Town Center and Town Center Core zone districts with sewer service, residential development shall provide one affordable housing unit on-site for every four market-priced units. A maximum residential density of 6 dwelling units per acre will be permitted. Housing type shall permit multifamily residential units and attached housing units.

§ 20-14.4 General Provisions for Constructing Affordable Units

a. Affordable housing units being constructed on-site or off-site shall meet the requirements of the Township of Upper's affordable housing ordinance, and 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. Developers electing to create affordable housing units elsewhere within the Township may do so within existing buildings, whether converted, reconstructed or purchased for buy down or rental subsidy assistance in any zone of the Township of Upper as set forth and regulated in this article.

c. The renovation or conversion of any existing dwelling in which all such dwelling units are deed restricted for affordability to and occupancy by low and moderate income households shall be permitted as of right, subject to meeting all other requirements of this Section 20-14 not withstanding any other provision of this Ordinance to the contrary.

d. 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-priced units otherwise being constructed within the development.

e. Residential structures in the form of two-family side-by-side or over-and-under unit buildings shall be deemed to be permitted uses in the underlying zone when created for the purpose of meeting the growth share obligation on site. These units shall be constructed within the development. The remaining portion of the project that is not considered to be an affordable unit shall conform to the requirements of the underlying zone.

§20-14.5 Payment in Lieu Provisions

a. The payment in lieu of construction of affordable units shall be based on N.J.A.C. 5:97-6.4 (c) 3. which is established under the COAH substantive rules and shall be revised by the Council periodically.

b. Development that generates a fraction of an affordable housing unit (because the development contains a number of units not evenly divisible by four) shall be required to make a payment in lieu of construction for that fraction of a unit based upon the pro-rated cost of constructing an affordable housing unit in the Township of Upper.

c. All payments in lieu of constructing affordable housing shall be deposited by the Township of Upper into an affordable housing trust fund to be established by the Township of Upper in conformance with regulations established by COAH and shall at all times be identifiable from development fees. These funds shall be used in accordance with regulations established by COAH to create new affordable housing opportunities within the physical boundaries of the Township of Upper.

§20-14.6 Other Requirements

a. A proposed affordable housing plan shall be submitted to the Board at the time application is made for any development requiring affordable housing pursuant to this Section. The Plan shall be a condition of “completeness” determination. All Plans shall be the subject of review by the Township Affordable Housing Liaison or appointee for consistency with COAH’s Rules and with the Town’s third round Housing Element and Fair Share Plan. Compliance with all of the terms of COAH’s Rules and with the approved plan shall be a condition of

development plan approval and may be covered by appropriate performance and maintenance guarantees as with any other required improvement.

b. Where an odd number of low and moderate income housing units are required to be provided, the majority of the units shall be low income units. Where there are an insufficient number of affordable units provided to meet the bedroom distribution requirements of COAH's Rules, the first unit shall be a two bedroom unit, the second unit shall be a one-bedroom unit and third unit shall be a three bedroom unit. Otherwise, the bedroom distribution shall be in strict accordance with COAH's Rules.

c. It shall be the developer's responsibility, at its sole cost and expense, to pay the per unit cost of the initial advertising and ongoing administration of the controls on affordability pursuant to the contract between the Township and the experienced administrative entity. The designated administrative entity shall file with the Township Affordable Housing Liaison or designee such certification, reports and or monitoring forms as may be required by COAH.

d. Developments covered by this Section shall be exempt from the payment of Development Fees under the adopted Development Fee Ordinance.

e. The use of any of the foregoing mechanisms for providing affordable housing within the Township of Upper shall be limited to the provision of non-age restricted affordable housing units in compliance with all of the COAH's Rules set forth at N.J.A.C. 5:97-1 et seq., unless specifically waived by the Township.

REPEAL OF CONFLICTING ORDINANCES

Any ordinances of the Township of Upper that are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SEVERABILITY

If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereof shall not affect the remaining parts of this Ordinance.

EFFECTIVE DATE

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

CODIFICATION

This Ordinance shall be codified in Chapter 20 of the Upper Township Code commencing at 20-14.1 and shall replace existing Chapter 20-14 in its entirety.

ATTEST:

WANDA GAGLIONE, Township Clerk

RICHARD PALOMBO, Mayor

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 26th DAY OF JANUARY, 2009 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP ON THE 23RD DAY OF FEBRUARY, 2009 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

WANDA GAGLIONE, TOWNSHIP CLERK
TOWNSHIP OF UPPER

Legislative History:

Introduced: ____ January 26, 2009 ____

Publication: ____

Newspaper(s): ____ The Press of Atlantic City ____

Second Reading & Public Hearing: ____

Final Adoption: ____

Final Publication Date: ____

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on and notice of adoption was thereafter published pursuant to law in The Press of Atlantic City on .

WANDA GAGLIONE, Township Clerk