

Ordinance No. 27-2021
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 repealed and replaced as follows:

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 between the Delaware River and N.J.S.H. Route 29, 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.
 - ~~5.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: SECTION 1200-9 shall be amended to read as follows (additions in **bold** and deletions in ~~strike through~~):

Section LDR-1200-9 New Construction

- 1. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:
 - a. **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”).**
 - ~~ab.~~ The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit. At least ~~43 percent~~ **thirteen percent (13%)** of all restricted rental units shall be very low income units (affordable to a household earning ~~30 percent~~ **thirty percent (30%)** or less of regional median income by household size). The very low income units shall be counted as part of the required number of low income units within the development.

- c. At least 50% of the affordable units in each bedroom category (1BR, 2BR and 3 BR) within a development shall be affordable to low-income households, inclusive of at least thirteen percent (13%) of units affordable to very-low-income households.
- bd. ~~In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be very low or low income units.~~ In each development that includes affordable housing, thirteen percent (13%) of the restricted units overall shall be very low-income units, and these very low-income units shall be counted toward the fifty percent (50%) low-income requirement. The very low-income units shall be provided as follows: in developments that produce one (1) very low-income unit, the very low-income unit shall be a two- or three-bedroom unit; in developments that produce two (2) very low-income units, no more than one (1) of the very low-income units may be a one-bedroom unit; and in developments that produce three (3) or more very low-income units, an equal number of very low-income units shall be provided within each bedroom distribution, and any additional very-low-income units shall be two- or three-bedroom units.
- ee. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - 1) The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total **very low-**, low- and moderate-income units;
 - 2) At least 30 percent of all **very low-**, low- and moderate-income units shall be two bedroom units;
 - 3) At least 20 percent of all **very low-**, low- and moderate-income units shall be three bedroom units; and
 - 4) The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
- df. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted **very low-**, low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

2. Accessibility Requirements:

- a. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free SubCode, *N.J.A.C. 5:23-7* and the following:

- b. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
- 1) An adaptable toilet and bathing facility on the first floor; and
 - 2) An adaptable kitchen on the first floor; and
 - 3) An interior accessible route of travel on the first floor; and
 - 4) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - 5) If not all of the foregoing requirements in b.1) through b.4) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs b.1) through b.4) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
 - 6) An accessible entranceway as set forth at P.L. 2005, c. 350 (*N.J.S.A. 52:27D-311a, et seq.*) and the Barrier Free SubCode, *N.J.A.C. 5:23-7*, or evidence that the City has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
 - a) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - b) To this end, the builder of restricted units shall deposit funds within the City of Lambertville's Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
 - c) The funds deposited under paragraph 6)b) above shall be used by the City of Lambertville for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - d) The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the City for the conversion of adaptable to accessible entrances.

e) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free SubCode, *N.J.A.C. 5:23-7*, and that the cost estimate of such conversion is reasonable, payment shall be made to the City's Affordable Housing Trust Fund in care of the City's Director of Finance, or their designee, who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.

7) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free SubCode, *N.J.A.C. 5:23-7*.

3. Design:

a. In inclusionary developments, to the **greatest** extent possible, **very low-**, low- and moderate-income units shall be integrated with the market units, **and the affordable units shall not be concentrated in separate building(s) or in separate area(s) from the market-rate units so they are not situated so as to be in less desirable locations than the other units in the development. In buildings with multi-family dwelling units, this shall mean that the affordable units shall be generally distributed within each building with market-rate units.**

b. In inclusionary developments, **very low-**, low- and moderate-income ~~units~~ **residents** shall have **full and equal** access to all of the ~~same common elements and facilities~~ **amenities, common areas, recreation areas and facilities, public facilities, public transportation, and shopping facilities as do the residents of** ~~as the~~ market units.

4. Maximum Rents and Sales Prices:

a. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and the calculation procedures as approved by the Court and detailed herein.

1) "Regional income ~~units~~ **limits** shall be established for the region that the City is located within (i.e. Region 3) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households

within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the City's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.”

2) The Regional Asset Limit used in determining an applicant’s eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by Lambertville annually by taking the percentage increase of the income limits calculated pursuant to paragraph 1) over the previous year’s income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

- b. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52 percent of median income.
- c. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13 percent of all low- and moderate-income rental units shall be affordable to very low-income households, which very low-income units shall be part of the low-income requirement.
- d. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.

- e. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
 - 1) A studio shall be affordable to a one-person household;
 - 2) A one-bedroom unit shall be affordable to a one and one-half person household;
 - 3) A two-bedroom unit shall be affordable to a three-person household;
 - 4) A three-bedroom unit shall be affordable to a four and one-half person household; and
 - 5) A four-bedroom unit shall be affordable to a six-person household.
- f. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
 - 1) A studio shall be affordable to a one-person household;
 - 2) A one-bedroom unit shall be affordable to a one and one-half person household; and
 - 3) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- g. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under *N.J.A.C. 5:80-26.4*, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of *N.J.A.C. 5:80-26.3*, as may be amended and supplemented.
- h. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under *N.J.A.C. 5:80-26.4*, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of *N.J.A.C. 5:80-26.3*, as may be amended and supplemented.

- i. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.
- j. The rents of very low-, low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Northeast Urban Area. This increase shall not exceed nine percent in any one year. Rent increases for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.

SECTION 3: SECTION 1200-21 shall be amended to read as follows (additions in **bold** and deletions in ~~striketrough~~):

Section LDR-1200-21 Administrative Agent

An Administrative Agent shall be an independent entity serving under contract to and reporting to the municipality. *The fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required.* The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which includes:

1. Affirmative Marketing:
 - a. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the City and the provisions of *N.J.A.C. 5:80-26.15*; and **applicable law. The affirmative marketing shall include the community and regional organizations included in the City's approved Affirmative Marketing Plan and identified in the January 29, 2020 Settlement Agreement with Fair Share Housing Center, and it shall also include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law; and**
 - b. Providing counseling or contracting to provide counseling services to **very low-**, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

SECTION 4: SECTION 1200-24.9 shall be amended to read as follows (additions in **bold** and deletions in ~~striketrough~~):

9. Ongoing Collection **and Expenditure** of Fees:

- a. The ability for the City of Lambertville to impose, collect and expend development fees shall expire with its Court-issued Judgment of Compliance and Repose unless the City of Lambertville has filed an adopted Housing Element and Fair Share Plan with the Court or other appropriate jurisdiction, has filed a Declaratory Judgment Action, and has received the Court's approval of its development fee ordinance. If the City of Lambertville fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance and Repose, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320). The City of Lambertville shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance and Repose, nor shall the City of Lambertville retroactively impose a development fee on such a development. The City of Lambertville shall not expend development fees after the expiration of its Judgment of Compliance and Repose.
- b. **Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court.**

SECTION 5: 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 6: 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 7: 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 8: 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 9. 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.

CLERKS CERTIFICATE

I, Cynthia L. Ege, CMR, RMC, Clerk of the City of Lambertville, in the County of Hunterdon, State of New Jersey, HEREBY CERTIFY as follows:

1. I am the duly appointed Clerk of the City of Lambertville, in the County of Hunterdon, State of New Jersey (herein called the "City"). In this capacity, I have the responsibility to maintain the minutes of the meetings of the governing body of the City and the records relative to all ordinances and resolutions of the City. The representations made herein are based upon the records of the City.
2. Attached hereto is a true and complete copy of an ordinance passed by the governing body of the City on first reading, December 2, 2021 and finally adopted by the governing body on December 16, 2021.
3. On December ____, 2021 a copy of the ordinance and a notice that copies of the ordinance would be made available to the members of the general public of the municipality who requested copies, up to and including the time of further consideration of the ordinance by the governing body, was posted in the principal municipal building of the City at the place where public notices are customarily posted. Copies of the ordinance were made available to all who requested them.
4. After final passage, the ordinance, a copy of which is attached hereto, was duly published on December ____, 2021. No protest signed by any person against making the improvement or incurring the indebtedness authorized therein, nor any petition requesting that a referendum vote be taken on the action proposed in the ordinance has been presented to the governing body or to me or filed in my office within the 20 days after the publication or at any other time after the final passage thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City this 23rd day of December, 2021.



Cynthia L. Ege, CMR, RMC, City Clerk