

**ORDINANCE 57-2006**

**ORDINANCE OF THE BOROUGH OF MADISON AMENDING CHAPTER 195 OF THE MADISON BOROUGH CODE ENTITLED "LAND DEVELOPMENT ORDINANCE OF THE BOROUGH OF MADISON" TO ESTABLISH AFFORDABLE HOUSING GROWTH SHARE REQUIREMENTS AND AMENDING SECTION 195-46 ENTITLED "AFFORDABLE HOUSING DEVELOPMENT FEES"**

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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-rate residential and nonresidential growth and development within the Borough of Madison; and

WHEREAS, the Borough of Madison 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 Council of the Borough of Madison, in the County of Morris and State of New Jersey, that the Madison Land Development Ordinance be amended as follows:

SECTION 1. Chapter 195 of the Madison Borough Code is hereby amended to add a new Section 195-48 to read as follows:

**§195-48. Affordable Housing Growth Share Requirements.**

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A. Purpose. The purpose of this Section 195-48 is to require all new development to address the growth share affordable housing obligation generated by such development as authorized by N.J.A.C. 5:94-4.4.

B. Applicability. The provisions of this Section 195-48 shall apply to all development activity that creates any growth share obligation for the Borough of Madison as determined by the regulations of the New Jersey Council on Affordable Housing in N.J.A.C. 5:94, regardless of whether the development requires approval by the Planning Board or Board of Adjustment, except as expressly exempted herein.

C. Exemptions. The provisions of this Section 195-48 shall not apply to development activity that does not create any growth share obligation for the Borough of Madison as determined by the regulations of the New Jersey Council on Affordable Housing in N.J.A.C. 5:94. Exempt development activity includes, but is not necessarily limited to, the following:

Residential renovations and additions.

Replacement residences that do not result in a net increase in the number of dwelling units.

Nonresidential renovations and improvements that do not result in any increase in building floor area or involve a change in use that creates a growth share obligation as determined under Section 195-48(E).

Any development for which prior to [the date of adoption of this Ordinance]: (i) preliminary subdivision and/or site plan approval was granted and the statutory vested rights period under N.J.S.A. 40:55D-49 remains in effect; or (ii) final subdivision and/or site plan approval was granted and the statutory vested rights period under N.J.S.A. 40:55D-52 remains in effect. This exemption shall not apply in the event of the subsequent approval of an application for amended approval involving a substantial change in the development proposal or an extension of a prior approval.

Any development involving the provision of affordable housing at a set-aside of at least 20% or greater for sale units or at least 15% for rental units.

Any development undertaken by the Borough of Madison, Madison Housing Authority or the Madison Board of Education.

D. Residential Development. All new residential development shall be subject to the following growth share affordable housing requirements:

In the case of residential development involving the creation and/or development of 8 or more dwelling units and/or single-family building lots, 1 affordable housing unit shall be provided for every 8 dwelling units and/or single-family building lots. Any fractional affordable housing requirement may be addressed by a payment in lieu pursuant to Section 195-48(D)(2). The required affordable housing unit(s) shall be constructed on-site, unless the Borough approves a proposal involving the provision of affordable housing elsewhere within the Borough of Madison. Construction of the affordable housing unit(s) shall be subject to the standards and requirements in Section 195-48(F).

In the case of residential development involving the creation of fewer than 8 dwelling units and/or single-family building lots, the developer shall be required to make a payment in lieu of providing affordable housing, which shall be placed in the Payment in Lieu Fund governed by Section 195-48(I). In accordance with N.J.A.C. 5:94-4.4(c), the amount of the required payment shall be negotiated with the Borough based on consideration of the anticipated cost of providing affordable housing units. The minimum payment amount shall be calculated based on \$182,750 multiplied by the fractional growth share affordable housing requirement as calculated to two decimal points.

The Planning Board may on application waive the requirement in Section 195-48(D)(1) for affordable housing to be provided on-site and authorize a payment in lieu pursuant to Section 195-48(D)(2).

E. Non-residential Development. All non-residential and mixed use development shall be subject to a growth share affordable housing requirement based on the net increase in square footage and the use category as follows:

1. The growth share affordable housing requirement shall be calculated based on the attached Schedule. (Appendix E of COAH's Round Three Regulations) This calculation shall be made initially prior to issuance of a building permit based on the final construction plans submitted with the building permit application and the amount shall be recalculated prior to issuance of a certificate of occupancy in the event that there has been a change in the amount of square footage of the building or structure.
2. The growth share affordable housing requirement shall include any fractional amount as calculated to 2 decimal places.
3. If the growth share affordable housing requirement is less than 1, then the developer shall make a payment in lieu of providing affordable housing, which shall be placed in the Payment in Lieu Fund governed by Section 195-48(I). In accordance with N.J.A.C. 5:94-4.4(c), the amount of the required payment shall be negotiated with the Borough based on consideration of the anticipated cost of providing affordable housing units. The minimum payment amount shall be calculated based on \$182,750 multiplied by the fractional growth share affordable housing requirement.
4. If the growth share affordable housing requirement is equal to or greater than 1, the developer shall provide the required affordable housing unit(s) on-site, unless the Borough approves a proposal involving the provision of affordable housing elsewhere within the Borough of Madison. Construction of the required affordable housing unit(s) shall be subject to the standards and requirements in Section 195-48(F). Any fractional growth share affordable housing requirement may be addressed by a payment in lieu pursuant to Section 195-48(E)(3).

5. The Planning Board may on application waive the requirement in Section 195-48(E)(4) for affordable housing to be provided on-site and authorize a payment in lieu pursuant to Section 195-48(E)(3).

F. Affordable Housing Development Criteria. Affordable housing unit(s) required to be provided by this Section 195-48 are authorized as conditional uses, and they shall be subject to following requirements:

All affordable housing units in residential developments including affordable housing units shall be subject to the requirements applicable to inclusionary developments, controls on affordability and the affirmative marketing requirements as set forth in the COAH regulations.

All affordable housing units must qualify as affordable units under the COAH regulations.

Whenever affordable housing is proposed to be provided on a site, site plan approval shall be needed and, in addition to all other zoning and land use regulations, required affordable housing units shall be subject to the following:

(a) When constructed as part of a single-family residential development, the affordable units may be included in two-family or multifamily structures, provided that the structure shall be designed to be compatible in appearance with adjacent single-family residential structures.

(b) When constructed as part of a multi-family residential development or mixed use development, the affordable units shall be included within the development structures and shall be compatible with the market units although smaller as to size and shall comply with COAH regulations.

(c) When constructed as part of a non-residential development, the affordable units shall be designed to be compatible with the nonresidential use.

(d) Off-street parking shall be provided in accordance with the requirements for all uses on the property.

(e) Landscaping shall be included to provide reasonable buffering and screening from adjacent land uses.

(f) If 4 or more affordable housing units are provided, then at least 25% of the units shall be designed for accessibility by handicapped persons in accordance with the Barrier Free Subcode in N.J.A.C. 5:23-7.

G. Administration. The Municipal Housing Liaison is hereby authorized and directed to administer the provisions of this Section 195-48, including the authority to negotiate payment in lieu fees (subject to the minimum payment amount set forth in this Section 195-48) and off-site affordable housing proposals as provided for herein.

H. Payment in Lieu Procedures. Payments in lieu of providing affordable housing that are authorized by this Section 195-48 shall be subject to the following requirements:

50% of the required payment shall be made prior to issuance of a building permit. If the development involves the construction of multiple buildings, the total payment in lieu for the development may be allocated on a proportionate basis in connection with each building permit applied for in connection with the development, according to the number of residential dwellings units and/or total square footage of nonresidential development, as applicable.

The remaining balance of the required payment shall be paid prior to issuance of any certificate of occupancy, subject to the potential pro rata allocation as provided for in Paragraph H(1). In the case of nonresidential development, the payment amount shall be recalculated in the event that there has been a change in the total square footage of the building or structure.

All payments in lieu shall be deposited in the Payment in Lieu Fund provided for under Section 195-48(I).

I. Payment in Lieu Fund. There is hereby established a Payment in Lieu Fund to be maintained separately from the Housing Trust Fund established by the Section 195-46(H). The funds in the Payment in Lieu Fund may only be used in accordance with an approved spending plan and for

the same purposes as the Housing Trust Fund as specified in Section 195-48, except that such funds may only be used for purposes involving the provision of affordable housing within the Borough.

SECTION 2: Section 195-46(E) entitled "Eligible exactions" is amended to add a new exemption which will read as follows:

"(4) Developments that are providing for growth share or greater affordable housing pursuant to Section 195-48 shall not be subject to the development fee pursuant to this Section 195-46."

SECTION 3. This Ordinance shall take effect upon final passage and publication in accordance with the law.

ADOPTED AND APPROVED

December 11, 2006

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ELLWOOD R. KERKESLAGER, Mayor

Attest:

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MARILYN SCHAEFER, Borough Clerk

Introduced and passed: November 13, 2006

Published, Madison Eagle: November 16, 2006

Hearing, amended, consideration for final adoption: December 11, 2006

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