

**ORDINANCE 52-2016**

**ORDINANCE OF THE BOROUGH OF MADISON AMENDING AND SUPPLEMENTING CERTAIN AFFORDABLE HOUSING PROVISIONS OF CHAPTERS 195-46, 195-47 AND 195-48 OF THE MADISON BOROUGH CODE ENTITLED “LAND DEVELOPMENT ORDINANCE”**

**STATEMENT OF PURPOSE:** The purpose of this ordinance is to clarify and amend certain provisions of the Borough Code pertaining to affordable housing, pending adoption of a comprehensive affordable housing ordinance after approval by the New Jersey Superior Court.

**WHEREAS**, the Borough of Madison, pursuant to the decision of the New Jersey Supreme Court *In the Matter of Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, N.J. 221, N.J., 1 (2015)*, filed a Declaratory Judgment Action on July 7, 2015 with the Superior Court, Law Division, Morris County (the “Court Action”); and

**WHEREAS**, as part of the Court Action, the Borough of Madison submitted, on November 30, 2015, its proposed Fair Share Housing Plan, which includes a proposed comprehensive amendment to the Borough Affordable Housing codes; and

**WHEREAS**, given the unanticipated time delays in the Court Action, the Borough has determined that it is in the best interest of the Borough to take the interim step of amending and clarifying certain sections of Chapters 195-46, 195-47 and 195-48, including eliminating references to prior regulations of the New Jersey Council on Affordable Housing (“COAH”) which are no longer in effect; and

**WHEREAS**, the Planning Board recommends to the Borough Council the adoption of these amendments and supplements to the Land Development Ordinance and finds that they are substantially consistent with the Master Plan or designed to effectuate such plan elements, and/or if they are wholly or partially inconsistent, that an affirmative vote of the majority of the full authorized membership of the governing body has been received in recognition of the substantial public benefits as cited in the Statement of Purpose section of this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

I

**Section 195-46 of the Madison Borough Code entitled “Affordable Housing Development Fees” shall be amended and supplemented as follows:**

**SECTION 195-46B** shall be deleted in its entirety and replaced with the following:

B. Basic Requirements. The Borough of Madison shall continue to collect

development fees, and shall spend those development fees in accordance with any spending plan approved by COAH or approved in the Court Action.

SECTION 195-46E shall be deleted in its entirety and shall be replaced with the following:

E. Non-residential development fees. Non-residential development fees shall be collected in accordance with *The New Jersey Non-Residential Development Fee Act* N.J.S.A. 40:55D-8.1 through 8.8.

SECTION 195 F(4) The phrase “growth share or” shall be deleted.

SECTION 195-46J All references to “RCA” or “RCAs” (Regional Contribution Agreements) are hereby deleted. The last sentence of 195-46J(1) shall be amended to read in its entirety as follows:

“The expenditure of all funds shall conform to a spending plan approved by COAH or a spending plan approved in the Court Action.”

SECTION 195-46L (containing a December 31, 2014 expiration date for actions taken with regard to development fees) shall be deleted in its entirety.

## II

**Section 195-47 of the Madison Borough Code, entitled “Affordable Housing Polices, Procedures and Administration” shall be amended and supplemented as follows:**

SECTION 195-47B(2) is amended to read as follows:

(B)(2) Notwithstanding anything in this Section 195-47(B) to the contrary, the Mayor and Borough Council may, at any time by Resolution, designate an entity other than the Madison Affordable Housing Corporation to perform all or any portion of the administrative and/or other functions set forth in Chapter 195-47.

SECTION 195-47E(5)(a) and (b) shall be deleted in their entirety and replaced with the following:

(a) Income eligible residents of the Borough of Madison shall be given priority for any units addressing the Borough’s present need under the Fair Housing Act which are rehabilitated/created using affordable housing trust funds collected pursuant to Chapter **§ 195-46**.

(b) Except as provided in (a) above, there shall be no residency preference

given to Borough of Madison residents for units funded in whole or in part from the affordable housing trust fund, unless such residency preferences are permitted by COAH or approved in the Court Action.

SECTION 197-47V shall be deleted in its entirety and replaced with the following:

“The Administrator shall implement the affirmative marketing program for affordable housing that has been or will be approved by Resolution of the Mayor and Council of the Borough of Madison”.

### III

**Section 195-48 of the Madison Borough Code entitled “Affordable Housing Inclusionary Development Requirements” shall be amended and supplemented as follows:**

SECTION 195-48A shall be amended to read in its entirety as follows:

A. Purpose. The purpose of this Section 195-48 is to require new developments to include a minimum inclusionary set aside for affordable housing.

SECTION 195-48C(5) the exemption in this section shall be eliminated in its entirety.

SECTION 195-48D(1) shall be deleted in its entirety and the following shall be inserted in its place:

D. Residential development. All new residential developments in all zones, except as exempted above, shall be subject to the following affordable housing requirements:

(1) In the case of residential development in any zoning district involving the creation and/or development and/or addition of five or more market rate dwelling units and/or single-family building lots: (i) at least twenty percent (20%) of all for-sale dwelling units and/or for sale single family building lots must be an affordable housing unit; and (ii) at least fifteen (15%) of all rental units must be an affordable housing unit. Any fractional affordable housing requirement shall be addressed by a payment in lieu pursuant to **§ 195-48D(2)** unless the developer agrees to round up the number of affordable units to next whole number. The required affordable housing unit(s) shall be constructed on-site unless the Mayor and Council, after referral by the Planning Board, approves a proposal involving the provision of affordable housing elsewhere within the Borough. Construction of the affordable housing unit(s) shall be subject to the standards and requirements in **§ 195-48F**, and shall be subject to the affordable housing policies, procedures and administration provisions of **§ 195-47**.

SECTION 195-48E shall be deleted in its entirety and the following shall be inserted in its place:

E. All mixed use developments that involve the creation and/or development and/or addition of five or more market rate dwelling units and/or single family building lots shall be subject to the affordable housing inclusionary development requirements set forth in Chapter 195-48 of the Madison Borough Code.

SECTION 195-48F(3) (requiring residential units in a mixed use development to be compatible in design to the non-residential use) shall be deleted in its entirety.

SECTION 195-48H(2) shall be amended to delete the second sentence which reads “In the case of non-residential 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”.

#### IV

This ordinance supersedes any inconsistent provisions of the Land Development Ordinance of the Borough of Madison, whether or not stated expressly herein. All other provisions of the Land Development Ordinance not inconsistent herewith shall remain in effect.

#### V

This Ordinance shall take effect as provided by law.

ADOPTED AND APPROVED

\_\_\_\_\_  
ROBERT H. CONLEY, Mayor

Attest:

\_\_\_\_\_  
ELIZABETH OSBORNE, Borough Clerk