

**BOROUGH OF HIGHLAND PARK
ORDINANCE NO. 22-2059**

**AN ORDINANCE CONCERNING THE BOROUGH OF HIGHLAND PARK
AFFORDABLE HOUSING PROGRAM AND AMENDING CHAPTERS 86 AND 230 OF
THE “CODE OF THE BOROUGH OF HIGHLAND PARK” CONCERNING DEED
RESTRICTED CONTROL PERIODS AND MANDATORY SET-ASIDE
REQUIREMENTS**

BE IT ORDAINED by the Borough Council of The Borough of Highland Park, County of Middlesex, State Of New Jersey as follows:

Section 1. Sections 86-13 and 86-17 of the “Code of the Borough of Highland Park” which establish control periods for ownership and rental units is amended to read as follows: (underlined material is new).

Section 86-13, “Control periods for restricted ownership units and enforcement mechanisms” is hereby amended to read as follows:

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:8—26.5, and each restricted ownership shall remain subject to the controls on affordability for a period of at least 30 years and until the municipality takes action thereafter to release the controls on affordability. After thirty years, the Borough shall have unilateral authority to extend such affordability controls.

Section 86-17, “Control periods for restricted rental units” is hereby amended to read as follows:

- A. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1 et seq., as may be amended and supplemented. After thirty years, the Borough shall have unilateral authority to extend such affordability controls.

Section 2. A **NEW** Article XXIII of Chapter 230 is hereby added to said Code to establish affordable housing mandatory set-aside requirement and shall read as follows:

Article XXIII. Affordable Housing Requirements

§ 230-207. Affordable Housing Mandatory Set-Aside

A. Purpose

This Section is intended to ensure that any site that benefits from a rezoning, variance or redevelopment plan approved by the Borough or the Borough Planning/Zoning Board that results in multi-family residential development of five (5) dwelling units or more produces affordable housing at a set-aside rate of at least fifteen percent (15%) for multi-family rental projects and at least twenty percent (20%) for all other multi-family projects. This section shall apply except where inconsistent with applicable law. This ordinance shall not apply to existing affordable housing inclusionary zones, which predate the effective date of this ordinance.

B. Affordable Housing Mandatory Set-Aside Requirement

If the Borough or the Borough Planning Board/Zoning Board permits the construction of multi-family or single-family attached residential development that is “approvable” and “developable,” as defined at N.J.A.C. 5:93-1.3, the Borough or the Borough’s Planning Board/Zoning Board shall require that an appropriate percentage of the residential units be set aside for low-and moderate-income households. This requirement shall apply beginning with the effective date the Ordinance creating this section was adopted to any multi-family or single-family attached residential development, including the residential portion of a mixed-use project, which consists of five (5) or more new residential units, whether permitted by a zoning amendment, a variance granted by the Borough’s Planning Board or Zoning Board. For any such development for which the Borough’s land use ordinances already permitted residential development as of the effective date of the Ordinance creating this section was adopted, this requirement shall only apply if the Borough or the Borough’s Planning Board or Zoning Board permits an increase in approvable and developable gross residential density to at least twice the permitted approvable and developable gross residential density as of the effective date the Ordinance created this section was adopted. Nothing in this paragraph precludes the Borough or the Borough’s Planning Board or Zoning Board from imposing an affordable housing set-aside in a development not required to have a set-aside pursuant to this paragraph consistent with N.J.S.A. 52:27D-311(h) and other applicable law. For all inclusionary projects, the appropriate set-aside percentage will be at least fifteen percent (15%) for multi-family rental projects and at least twenty percent (20%) for all other multi-family projects. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment or variance, or for approval of any particular proposed project. This requirement does not apply to any sites or specific zones otherwise identified in the Borough’s Settlement Agreement with FSHC, which was executed on December 22, 2017, or in the Borough’s Adopted Housing Element and Fair Share Plan dated December 18, 2018, for which density and set-aside standards shall be governed by the specific standards set forth therein.

Furthermore, this Section shall not apply to developments containing four (4) or less dwelling units. All subdivision and site plan approvals of qualifying residential developments shall be conditioned upon compliance with the provisions of this Section. Where a developer demolishes existing dwelling units and builds new dwelling units on the same site, the provisions of this section shall apply only if the number of net new dwelling units is five (5) or more.

All affordable units produced as a result of this Ordinance shall comply with the Borough’s Affordable Housing Ordinance, COAH and UHAC regulations and applicable laws, including, but not limited to bedroom and income distributions and income distributions requirements within each bedroom category. This obligation also includes compliance with the Fair Housing Act’s

(“FHA”) very low-income requirements, including the requirement that at least 13% very low-income units as defined by the FHA (households earning no more than 30% of the region’s median income).

C. Redevelopment Projects

The Borough may, if it determines appropriate, require affordable housing in redevelopment projects that deviates from the requirements of Sections 230-207 (A) and (B). Such requirement shall be included in applicable redevelopment agreements provided that such requirements must comply with the Borough’s Settlement Agreement with FSHC, which was executed on December 22, 2017 and the Borough’s Adopted Housing Element and Fair Share Plan dated December 18, 2018.

Section 3. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held 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.

Section 4. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of Highland Park, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the General Ordinances of the Borough of Highland Park are hereby ratified and confirmed, except where inconsistent with the terms hereof.

Section 5. The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this ordinance to the Middlesex County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15, and N.J.S.A. 40:55D-63 (if required).

Section 6. After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of Highland Park for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Borough Council, within 35 days after referral, a report including identification of any provision in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

Section 7. This Ordinance shall take effect immediately upon (1) adoption; (2) approval by the Mayor pursuant to N.J.S.A. 40:69A-149.7; (3) publication in accordance with the laws of the State of New Jersey; and (4) filing of the final form of adopted ordinance by the Clerk with (a) the Middlesex County Planning Board pursuant to N.J.S.A. 40:55D-16, and the Borough Tax Assessor as required by N.J.S.A. 40:49-2.1.

Introduced at the meeting on September 6, 2022

Adopted: _____, 2022

Attest:

Approved: _____, 2022

Jennifer Santiago
Borough Clerk

Gayle Brill Mittler
Mayor