

**BERNARDSVILLE BOROUGH  
ORDINANCE #2024-1990**

**AN ORDINANCE CONCERNING AFFORDABLE HOUSING SET-ASIDES AND  
SUPPLEMENTING AND AMENDING ARTICLE 13 OF THE BOROUGH LAND  
DEVELOPMENT REGULATIONS ENTITLED “AFFORDABLE HOUSING”**

**WHEREAS**, the Borough Land Development Regulations currently provide that, “Any residential or mixed-used development, within the public sewer service area... that produces five or more housing units, shall be required to provide for affordable housing set as an aside of at least 20% of the total housing units in “for sale” developments with 15% of the total housing units in “rental” developments....”; and

**WHEREAS**, it is not always practicable to provide on-site affordable units in developments containing ten or fewer units; and

**WHEREAS**, *N.J.S.A. 52:27D-329.3* provides that:

“The [now defunct] council [on affordable housing] may authorize a municipality that has petitioned for substantive certification to impose and collect payments-in-lieu of constructing affordable units on site upon the construction of residential development.... Payment-in-lieu fees shall be deposited into a trust fund, and accounted for separately from any other fees collected by a municipality....”

**NOW THEREFORE, BE IT ORDAINED** by the Council of the Borough of Bernardsville in the County of Somerset, State of New Jersey that Article 13 of the Borough Land Development Regulations entitled “Affordable Housing is hereby supplemented and amended as follows:

**Section 1.** Paragraph “e” of § LD-13-1.5 entitled “New Construction” is hereby supplemented and amended to read as follows:

“e. Affordable Housing Set-Asides.

i. Any residential or mixed-use development, within the public sewer service area of the municipality, that produces five or more housing units, shall be required to provide for affordable housing set-asides of at least 20% of the total housing units in “for-sale” developments and 15% of the total housing units in “rental” development. ~~When the application of the set-aside requirement results in a set-aside requirement that is not a whole number, the set-aside requirement shall be rounded up to the next whole number.~~ When any calculation of the percentage of affordable units required to be divided results in a fractional unit of one-half or more, the fraction shall be rounded up to the next whole unit. When a calculation results in a fraction of less than one-half, the fraction shall be rounded down to the previous whole unit.

ii. Residential development with between six and ten units may make a payment-in-lieu of on-site construction of affordable units. For purposes of this section, the payment-in-lieu of affordable housing shall initially be established as \$180,000 per unit. The payment-in-lieu of affordable housing is presumptively the cost of constructing an affordable unit and is based on the now expired COAH rule, set forth at N.J.A.C. 5:97-6.4 which was \$145,903 for Region 3 in 2009, as adjusted for inflation. When any calculation of the percentage of affordable units required to be divided results in a fractional unit of one-half or more, the fraction shall be rounded up to the next whole unit. When a calculation results in a fraction of less than one-half, the fraction shall be rounded down to the previous whole unit. The payment-in-lieu of affordable housing is presumptively the cost of constructing an affordable unit in the Borough. The Borough Council may adjust the presumptive amount based upon appropriate evidence.”

**Section 2.** Any or all other ordinances or parts thereof in conflict or inconsistent with any of the terms hereof are hereby repealed to such extent as they are so in conflict or inconsistent.

**Section 3.** In case any article, section or provision of this ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect any other article, section or provision of this ordinance except insofar as the article, section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

**Section 4.** This ordinance shall become effective immediately upon final passage and publication as required by law.

COUNCIL OF THE BOROUGH OF  
BERNARDSVILLE IN THE COUNTY  
OF SOMERSET

ATTEST:

Anthony Suriano  
Anthony Suriano, Borough Clerk

By: Mary Jane Canose  
Mary Jane Canose, Mayor

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Introduction: 1/22/24

1st Publication: 1/25/24

Public Hearing and Adoption: 2/26/24

2nd Publication: 2/29/24