

Ordinance 2021-11

Adopted April 19, 2021

ORDINANCE OF THE BOROUGH OF DUNELLEN, IN THE COUNTY OF MIDDLESEX, NEW JERSEY AMENDING BOROUGH CODE CHAPTER 89 TO AUTHORIZE PAYMENTS IN LIEU OF CONSTRUCTING FRACTIONAL AFFORDABLE HOUSING UNITS

WHEREAS, the Borough Code and the adopted redevelopment plan applicable to certain redevelopment areas in the Borough include development standards that require redevelopers to set aside a certain percentage of market rate residential dwelling units as affordable housing for persons of low and moderate income and, in certain instances, the application of the set aside can result in a fraction of a unit of affordable housing; and

WHEREAS, the Borough is desirous of allowing redevelopers to satisfy the affordable housing set aside requirement by making a payment in lieu of constructing a fractional affordable housing unit pursuant to N.J.A.C. 5:93-8.10(c); and

WHEREAS, the Borough Council of the Borough of Dunellen deems that authorizing payments in lieu of constructing fractional affordable units will benefit the citizens of the Borough.

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Dunellen, County of Middlesex, State of New Jersey, as follows:

1. §89-13.B(4) of Dunellen's code shall be rewritten as follows:

(4) Payments in-lieu of constructing affordable units.

(a) The standards for the collection of payments-in-lieu of constructing affordable units or standards for constructing affordable units off-site shall be in accordance with N.J.A.C. 5:93-8. With the exception of fractional affordable units, Developers are prohibited from making a payment in lieu of constructing affordable units on-site or from constructing required affordable units off-site.

(b) Payments in-lieu constructing fractional affordable units. In the event that the inclusionary set-aside percentage (15% for rentals / 20% for-sale) of the total number of residential units does not result in a full integer, the fractional affordable unit shall be addressed as follows:

[1] The developer may round the fraction upward to construct a whole additional affordable unit at developer's sole cost; or

[2] The developer may round the fraction downward and construct the lesser whole number of affordable units and make a payment in-lieu of constructing the fractional additional unit ("fractional payment in-lieu"); or

[3] If the set-aside results in a fractional unit of more than 0.49 units, at the discretion of the Borough Council, the fractional unit shall be rounded up to a full unit and the developer shall construct the additional full unit. In that event, the Borough shall make a contribution to the developer from its Affordable Housing Trust Fund in an amount that equals the difference between the fractional unit resulting from the set-aside and the additional full unit, multiplied by the cost of construction of an affordable unit as set forth in Section 89-13.B(4)(c)[1]. If the set-aside results in a fractional unit equal to 0.49 units or less, the Borough Council, at its discretion, may make a contribution to the developer as set forth above, but only if accepting such contribution and assuming the obligation to construct the additional unit is acceptable to the developer. The Borough Council shall only exercise its discretion under this subsection if there are sufficient funds available in the Affordable Housing Trust Fund. For development subject to an adopted redevelopment plan, the Borough Council shall exercise its discretion under this subsection at the time the redeveloper obtains Borough Council approval of its concept plan, and at that time the Borough shall reserve sufficient funds from the Affordable Housing Trust Fund for that purpose. The Borough shall make the contribution payment upon application by the redeveloper after the recordation of the affordable housing deed restriction for the project.

[4] The fractional payment in-lieu amount shall be calculated as the fractional unit multiplied by the base payment in-lieu dollar amount established in Section 89-13.B(4)(d)[1] of the Borough Code.

[5] For example: If seven total units are developed at an inclusionary site, a 20% set-aside would require 1.4 affordable units. Per the requirements above:

[a] In accordance with Section 89-13.B(4)(b)[1], the developer may round up the 0.4 unit to one whole affordable unit so as to construct a total of two affordable housing units at developer's sole cost; or

[b] In accordance with Section 89-13.B(4)(b)[2], the developer may round the fraction downward so as to construct only one affordable unit and shall pay into the Borough's Affordable Housing Trust Fund a fractional in-lieu payment equal to the dollar amount established in Section 89-13.B(4)(d)[1] multiplied by 0.4 units; or

[c] In accordance with Section 89-13.B(4)(b)[3], the Borough Council may make a contribution if it is acceptable to the developer and the developer is willing to build the additional affordable unit, the developer shall round up the 0.4 unit to one whole affordable unit so as to construct a total of two affordable housing units, then the Borough shall make a contribution from the Affordable Housing Trust Fund to the developer in an amount equal to the dollar amount established in Section 89-13.B(4)(c)[1] multiplied by 0.6 units;

[d] If eight total units are developed at an inclusionary site, a 20% set-aside would require 1.6 affordable units, in accordance with Section 89-13.B(4)(b)[3], if the Borough Council exercises its discretion to require the developer to build the additional affordable unit, the developer shall round up the 0.6 unit to one whole affordable unit so as to construct a total of two affordable housing units, then the Borough shall make a contribution from the Affordable Housing Trust Fund to the developer in an amount equal to the dollar amount established in Section 89-13.B(4)(c)[1] multiplied by 0.4 units.

(c) Cost of construction of affordable housing unit. The amount of payments in lieu of constructing fractional affordable units on site shall be based on the cost of constructing new residential units pursuant to this section. The cost of constructing new residential units includes the sum of development hard costs, related soft costs and developer's fees pursuant to the cost containment provisions of N.J.A.C. 5:43-2.4(a)1 through 6 and land costs equal to 25 percent of the first quartile of new construction costs as reported to the Homeowner Warranty Program.

[1] The base dollar amount of the payment in-lieu of constructing an affordable unit at the time of adoption of this chapter shall be \$155,000, or any amount established by the Courts, COAH, or other relevant jurisdiction.

[a] This base amount shall have an annual increase of 2% based upon the date of the adoption of this ordinance and adjusted every five (5) years by the Borough to reflect the most current and accurate market conditions or better cover the cost to the Borough to subsidize

affordable housing construction. The payment shall be imposed as a condition of development approval by the Planning Board.

[b] The payment in-lieu amount paid by any developer shall be deposited by the Borough into its duly established affordable housing trust fund and may be spent in accordance with the Borough's approved spending plan, applicable COAH regulations, court orders, and other applicable statutes and legislation.

(d) The developer shall make the fractional payment in-lieu prior to the issuance of first temporary or final certificate of occupancy for the inclusionary development.

2. §89-4.B(2) of Dunellen's code shall be rewritten as follows:

Any development within an area in need of redevelopment or rehabilitation, where a redevelopment agreement that includes specific requirements related to the provision of affordable housing has been executed by the Borough and the designated redeveloper, shall be exempt from development fees, except for the payment of fractional payments in-lieu pursuant to Section 89-13.B(4) herein.

3. All ordinances or parts of ordinances inconsistent herewith are hereby repealed as to such inconsistency.
4. If any article, section, subsection, paragraph, phrase, or sentence is for any reason held to be unconstitutional or invalid, said article, section, subsection, paragraph, phrase or sentence shall be deemed separable.
5. This ordinance shall take effect upon final publication as provided by law.