

ORDINANCE 2006-51

AN ORDINANCE AMENDING CHAPTER 188 (DEVELOPMENT REGULATIONS) OF THE CODE OF THE TOWNSHIP OF HILLSBOROUGH TO ESTABLISH A SEPARATE REVISED AFFORDABLE HOUSING GROWTH SHARE REQUIREMENT FOR RESIDENTIAL AND NON-RESIDENTIAL DEVELOPMENT

BE IT ORDAINED by the Township Committee of the Township of Hillsborough, County of Somerset, State of New Jersey as follows:

Section 1: Chapter 188 (Development Regulations) of the Hillsborough Municipal Code shall be amended by adding new Section 139.1 as follows:

188.139.1 Growth Share Affordable Housing Production.

- A. Purpose. The New Jersey Council on Affordable Housing (COAH) has implemented a 'growth share' approach to provide a sufficient amount of affordable housing in conjunction with market-priced residential and non-residential development within the Township. The purpose of this section is to implement COAH's 'Growth Share' policies through inclusionary zoning to provide for a sufficient amount of affordable housing to meet local needs pertaining to COAH requirements as part of the third round of affordable housing obligations extending from 2004 to 2014.
- B. Applicability.
 1. This subsection of the land use regulations of the Township of Hillsborough sets forth mechanisms by which developers shall provide for a fair share of affordable housing based on growth that is associated with development taking place within the Township of Hillsborough.
 2. Residential Development. Except as exempted in Section C below, all residential development in the Township of Hillsborough that results in the construction of new market rate dwelling units in accordance with N.J.A.C. 5:94-1 et seq., shall be subject to the 'growth share' provisions of this ordinance.
 3. Non-residential Development. Except as exempted in Subsection C

below, all non-residential development in the Township of Hillsborough that results in an increase in gross floor area of any existing non-residential structure or the construction of any new non-residential structure in accordance with N.J.A.C. 5:94-1 et seq., shall be subject to the ‘growth share’ provisions of this ordinance.

C. Exemptions.

1. Developments that received preliminary or final approval from the Planning Board and/or Board of Adjustment, as applicable, prior to the effective date of this ordinance.
2. Residential developments that are located in any zone(s) where an affordable housing set-aside is required in an amount greater than otherwise required in this ordinance or that include only affordable housing.
3. Residential developments in non-residential zones where the developer elects not to build affordable housing on-site, the developer shall pay an affordable housing fee as provided in Section 188-139 A(1)(a).
4. Non-residential developments in non-residential zones where the developer elects not to build affordable housing on-site, the developer shall pay an affordable housing fee as provided in Section 188-139 A(2)(a).

D. Required Growth Share Affordable Housing Production.

1. Residential development. Residential developers in all zones shall provide affordable housing at the ratio of one (1) affordable unit for every eight (8) new market-priced dwelling units.
2. Non-residential development. Non-residential developers in all zones shall provide affordable housing at the ratio of one (1) affordable unit for every twenty five (25) new jobs created as a result of new non-residential construction, calculated pursuant to COAH’s regulations in effect at the time of construction.

E. Methods of providing affordable housing. The provision of affordable housing shall be through construction of on-site, construction off-site but within the Township, or through payment in lieu of construction in all residential zones as follows: AG, MZ, RA, RS, R, CR, R1, TC, PD, and MVH. ***Where fractional affordable housing units are the result of calculations under the COAH growth share requirements for a development, the applicant has the option of building an affordable unit or submitting a payment in lieu fee for the amount of the fractional affordable unit.***

1. Construction of affordable housing on-site.
 - a. Residential development
 - i. Affordable housing may be provided as a permitted dwelling type in residential zone districts and where

otherwise specifically permitted. In all residential zones that permit only detached single family dwellings, up to 4 affordable dwellings may be provided in a single structure subject to the exterior of the structure appearing the same as other permitted single family dwellings in the development. All affordable dwelling units shall be designed to resemble as nearly as practicable similar dwelling types in the same development.

ii. No density increase shall be permitted for the construction of affordable housing on-site.

b. Non-residential development

i. Affordable housing may be constructed as part of a permitted mixed-use development and where otherwise specifically permitted.

ii. The applicable Board may consider shared parking opportunities in considering parking requirements during site plan review.

F. Construction of affordable housing units off-site but within the Township. Developers electing to create affordable housing units off-site but within the Township may do so within new or existing buildings, whether converted, reconstructed or purchased for buy-down, in any residential zone district and where otherwise specifically permitted.

G. Requirements common to on-site and off-site construction.

1. No exceptions from required setbacks, building height, or coverage limits in the zone shall be granted for the construction of new affordable housing unless approved by the applicable Board (Planning and/or Zoning) as a bulk variance in accordance with the Municipal Land Use Law.

2. No exceptions from Board of Health or New Jersey Department of Environmental Protection (NJDEP) regulations for water supply and sewage treatment shall be granted for the construction of the affordable housing.

3. No affordable dwelling unit shall be smaller than 550 square feet.

4. All affordable dwelling units shall meet or shall be improved to comply with the Uniform Construction Code and all other applicable requirements.

5. All affordable housing shall comply with COAH's regulations pertaining, but not limited to, the phasing (with the market units being constructed by the same developer), low/moderate income split, controls on affordability, bedroom distribution, affirmative marketing, heating source and administration of affordable housing.

6. All required setbacks, building height and impervious coverage

limits for the zone shall be met on the lot except that any existing setback deficiencies and other nonconformities of the lot and/or building(s) located thereon may be continued for as long as the existing buildings remain where currently located on the site, without the need for additional variances.

7. To the greatest extent possible, affordable housing units being provided within inclusionary developments shall be dispersed throughout the inclusionary developments and shall be located within structures or buildings designed to be architecturally indistinguishable from the market-rate units otherwise being constructed within the development. The scale, massing, roof pitch and architectural detailing of the structures or buildings containing the affordable housing units shall be similar to and compatible with that of the market-rate units.

H. Payment in lieu of construction of on-site affordable housing.

1. Payment in lieu of construction of the *new* on-site affordable

housing *obligation* shall only be considered as a last resort versus on-site affordable housing. ***The developer shall be required to demonstrate to the satisfaction of the Planning Board or the Zoning Board of Adjustment, as the case may be, why on-site construction of affordable housing (where at least one affordable unit is required) is economically or physically unfeasible. An in lieu payment may be made for any fractional share of an affordable housing unit at the discretion of the developer.***

2. The minimum payment in lieu of construction of on-site affordable housing shall be based upon, at a minimum, a proportionate share of the total project cost calculated in one or more pro-forma statements for the construction of an affordable housing *unit or* development in the Township. ***A pro-forma is provided by the Township as an appendix to the Hillsborough growth share requirements and shall be maintained on file by the Township in the Office of the Township Clerk. Pro formas shall take into account the actual net costs to construct affordable units within the Township, including, but not limited to, construction costs, land acquisition and legal and other soft costs, after deducting the restricted sales prices or rental values of the units.***

3. All payments in lieu of constructing affordable housing shall be deposited by the Township of Hillsborough into the Hillsborough Affordable Housing Trust Fund in conformance with the regulations established by COAH and shall at all times be identifiable from and accounted for separately from development fees. These funds shall be used by the Township of Hillsborough in accordance with the regulations established by COAH to create new affordable housing

opportunities within the physical boundaries of the Township.

4. ***If a developer elects to provide for a fraction of an affordable housing unit that he would otherwise be obligated to cover with an in lieu contribution by rounding up and providing a whole or an additional whole affordable housing unit on-site, said whole or additional whole affordable housing unit shall not be counted as part of the density of the proposed development.***

I. General requirements

1. All of the affordable housing to be provided pursuant to this ordinance shall be in compliance with all of COAH's applicable regulations.
2. An affordable housing plan shall be submitted to the applicable Board with any application for development requiring growth share affordable housing pursuant to this ordinance. The affordable housing plan shall be a condition of completeness of the application. Compliance with all of the terms of COAH's regulations and with an approved affordable housing plan shall be a condition of development plan approval. The developer shall provide appropriate performance and maintenance guarantees as with any other required improvement.
3. Where the number of affordable housing units that is required to be provided is odd, the majority of the affordable units shall be low income units. Where there are an insufficient number of affordable housing units to meet the bedroom distribution requirements of COAH's regulations, the first unit shall be a two-bedroom unit, the second unit shall be a three-bedroom unit and the third unit shall be a one-bedroom unit. Otherwise, the bedroom distribution shall be in strict accordance with COAH's regulations.
4. The developer shall pay the per unit cost of the initial and ongoing administration for the affordable housing attributable to its development.

Section 3: This ordinance shall take effect upon its adoption, passage and publication according to law.

ATTEST:

TOWNSHIP OF HILLSBOROUGH:

Kevin P. Davis, RMC, Township Clerk

Carl Suraci, Mayor

Introduced: 11/28/06
Published: 12/7/06
Public Hearing: 12/19/06
Adoption: 12/19/06

Published: 12/28/06

APPENDIX TO HILLSBOROUGH GROWTH SHARE REQUIREMENTS
PAYMENT IN LIEU PRO FORMA
September 2006

Section 5:94-4.4(b) of the NJ Council on Affordable Housing (COAH) Third Round Substantive Rules provides that, “...*Through the zoning ordinance, a municipality shall require a developer to construct the affordable units on site or elsewhere in the municipality or, alternatively, allow the option of a payment in lieu of constructing the units on site.*” The COAH Handbook-Your Guide for Navigating the Third Round Rules notes that, “...*The amount of payments in lieu of constructing affordable units on site is negotiated between the municipality and the developer. However, your municipality may establish minimums by ordinance based on an analysis of actual costs to subsidize units within you municipality.*”

In calculating the in lieu payment for an affordable housing dwelling unit in Hillsborough, it was estimated that the dwelling would contain 1,000 square feet of floor area (2 bedrooms). The average cost components for an affordable housing unit in Hillsborough are broken down as follows:

1. Hard construction costs @ \$130 per square foot X 1,000 square feet = \$130,000
2. Land and improvement (utilities, etc.) costs based on the building lot @ \$115,000 at a density of 1 affordable unit for 9 dwelling units provided (11.1%) = \$12,765
3. Soft costs including legal fees and closing costs = \$8,000

The subtotal in lieu payment is \$150,765. This compares with the COAH Region 3 (which includes Somerset County) illustrative sales price of \$150,696 in 2005. COAH permits a 4% yearly increase so that the minimum in lieu payment calculated for Hillsborough Township is **\$156,796.**