

Introduction: 6/13/19  
Public Hearing:6/27/19  
Effective:8/5/19

**TOWNSHIP OF MAHWAH  
ORDINANCE NO. 1873**

**AN ORDINANCE OF THE TOWNSHIP OF MAHWAH TO DELETE AND REPLACE  
SUBSECTION 16 "HOUSING PLAN ENFORCEMENT AND PENALTIES" OF  
CHAPTER XXIV "ZONING" WITHIN THE LAND DEVELOPMENT WITH  
SUBSECTION 16 "TOWNSHIP-WIDE SET-ASIDE ORDINANCE" TO ESTABLISH A  
TOWNSHIP-WIDE SET-ASIDE REQUIREMENT AND TO SET FORTH THE  
STANDARDS AND CRITERIA APPLICABLE THERETO**

**WHEREAS**, the Township Council of the Township of Mahwah desires to create a realistic opportunity for the creation of affordable housing within the Township; and

**WHEREAS**, the Township voluntarily brought a timely declaratory judgment action pursuant to the procedures set forth by the Supreme Court in *In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (201)* ("*Mt. Laurel IV*") seeking approval of a Housing Element and Fair Share Plan that satisfied the Township's obligation to provide for its fair share of the regional need of low- and moderate-income housing; and

**WHEREAS**, after a Fairness Hearing held on July 10, 2018 and by Order dated July 12, 2018, the Hon. Christine Farrington, J.S.C. approved a series of settlement agreements between the Township of Mahwah, Fair Share Housing Center, and two developer-intervenors intended to establish the Township's affordable housing obligations; and

**WHEREAS**, pursuant to the requirements of the July 12, 2018 Order, the Township of Mahwah intends to supplement its Zoning Ordinance to include provisions addressing Mahwah's constitutional obligation to provide for its fair share of low- and moderate-income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

**WHEREAS**, the Mahwah Planning Board has adopted a Housing Element and Fair Share Plan dated May 29, 2019 pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq., which addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C.5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

**WHEREAS**, this Ordinance is intended to provide assurances that low- and moderate-income units ("affordable units") are required when certain types of applications are approved; and

**WHEREAS**, this Ordinance is intended to implement the above-referenced Housing Element and Fair Share Plan, which has been endorsed by the Governing Body.

**NOW THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Mahwah, as follows:

**Section 1.** The Land Development Code Chapter XXIV "Zoning", Subsection 16 is hereby deleted and replaced with a new Subsection 16 entitled "Township-Wide Set-Aside Requirements", said section to read as follows:

**§24-16 Township-Wide Set-Aside Requirements.**

- a. Any property in the Township of Mahwah that receives planning board approval, zoning board approval, a zoning change, density variance or approval of a redevelopment or rehabilitation plan to permit multi-family residential development, which multi-family residential development will yield five (5) or more new dwelling units, shall provide a minimum affordable housing set-aside of twenty (20%) percent as the Township is located in the Highlands Region.
- b. This requirement shall not apply to residential development on sites that are zoned for inclusionary residential development as part of the Township's Housing Element and Fair Share Plan, which are subject to the affordable housing set-aside requirements set forth in the applicable zoning.
- c. This requirement does not, and shall not be construed to, grant any property owner or developer the right to any rezoning, variance or other relief, nor does this requirement establish any obligation on the part of the Township of Mahwah to grant any such rezoning, variance or other relief.
- d. A property shall not be permitted to be subdivided so as to avoid compliance with this requirement.
- e. All affordable units created pursuant to this Section shall be governed by the provisions of Section 24-13, "Affordable Housing Regulations".

**Section 2.** If any section, paragraph, sub-section, clause or provision of this ordinance shall be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of this ordinance as a whole or any part thereof.

**Section 3.** All ordinances or parts of ordinances of the Township heretofore adopted that are inconsistent with any of the terms and provisions of this ordinance are hereby repealed to the extent of such inconsistency.

**Section 4.** This Ordinance shall take effect twenty (20) days after final passage, adoption and publication according to law.

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Dated: July 19, 2019

Attest

  
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David May  
Council President

  
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Kathrine G. Coviello  
Municipal Clerk

I, Kathrine G. Coviello, Municipal Clerk of the Township of Mahwah, hereby certify that the within Ordinance was passed and adopted at a meeting of the Township Council held on the 27 day of June, 2019.

  
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Kathrine G. Coviello, RMC/CMC/MMC  
Municipal Clerk