

**Borough of Pennington**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE AMENDING CHAPTER 215 "ZONING", ARTICLE II "GENERAL REGULATIONS" TO  
INCLUDE NEW SECTION 215-9.1 ENTITLED "MANDATORY SETASIDE OF AFFORDABLE HOUSING UNITS"**

**WHEREAS**, the Borough, as part of its fourth round Housing Element and Fair Share Plan, has applied a vacant land adjustment to a portion of both its third and fourth round affordable housing obligations; and

**WHEREAS**, the Mayor and Council has endorsed the fourth round plan adopted by the Planning Board and is desirous of implementing a mechanism to capture affordable housing units in projects that are not planned at this time but may be proposed in the future.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Pennington, in the County of Mercer and State of New Jersey as follows:

**Section I.      The following section shall be added to the Code, to read as follows:**

***Section 215-9.1 "Mandatory Setaside of Affordable Housing Units"***

- A. All residential development, including the residential portion of a mixed-use project, which consists of five (5) or more new residential units shall be required to setaside a minimum of 20% of the residential units be set aside for very low, low, and moderate income households, as set forth below. Where the calculation of required the setaside results in a fraction of 0.49 or less, it may be rounded down to the next whole number; fractions of 0.50 or more shall be rounded up to the next whole number.
- B. This requirement shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five (5) or more. This requirement shall not apply to sites or zoning districts identified in the Fair Share Plan where standards for the set-aside of affordable housing units have already been established.
- C. All affordable housing units shall comply with the Borough's Affordable Housing Ordinance, Chapter 58, as well as the NJ Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), and the Uniform Housing Affordability Control Rules (N.J.A.C. 5:80-26.1 et seq.). This shall include but is not limited to:
  - (1) The requirement that at least thirteen percent (13%) of the affordable units within each bedroom distribution shall be required to be for very low income households earning thirty percent (30%) or less of median income;
  - (2) Appropriate distribution of 1-, 2-, and 3-bedroom units;
  - (3) Recording of appropriate affordability controls of not less than forty (40) years for rental units and not less than thirty (30) years for sale units, and
  - (4) Minimum unit sizes by square footage for affordable housing units.

(5) The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include the community and regional organizations identified by the Township, and it shall also include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.

D. The affordable units shall be integrated with the market-rate units, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) or floor(s) from the market-rate units. In buildings with multiple dwelling units of similar tenure, this shall mean that affordable units shall be generally distributed within each building with market-rate units. The residents of the affordable units shall have full and equal access to all amenities, common areas, and recreation areas and facilities as the residents of the market-rate units. The affordable units shall be the same type of housing unit as the market rate units, meaning that a market rate building available to families shall not be developed to provide age-restricted housing units.

E. Construction of the affordable units in inclusionary developments shall be phased in compliance with N.J.A.C. 5:93-5.6(d).

F. Subdivision and/or site plan approval shall not be granted by the reviewing board unless the developer complies with the requirements to provide very low-, low-, and moderate-income housing pursuant to the provisions of this section. A property shall not be permitted to be subdivided so as to avoid meeting this requirement. The board may impose any reasonable conditions to ensure such compliance.

G. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.

H. Any developer subject to the requirements of this section and who provides an affordable housing setaside shall not be subject to payment of residential development fees.

**Section II.**      **Severability**

If any section, part of any section, or clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this ordinance. The governing body of the Borough of Pennington declares that it would have passed the ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

**Section III.**      ***Effective Date.***

This ordinance shall take effect immediately upon passage and publication according to law.

ATTEST: \_\_\_\_\_  
Borough Clerk

Introduced:

Adopted: