

ORDINANCE NO. 1348-2006

**AN ORDINANCE TO AMEND CHAPTER 249 OF
THE BOROUGH OF EDGEWATER ENTITLED "LAND USE AND
DEVELOPMENT"**

WHEREAS, the New Jersey Supreme Court and New Jersey Legislature have recognized and mandated in *So. Burl Co NAACP v. Mount Laurel*, 92 NJ 158 (1983) ("Mount Laurel II") and the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. ("FHA") that every municipality in New Jersey has an affirmative obligation to facilitate the provision of affordable housing; and

WHEREAS, the New Jersey Council on Affordable Housing ("COAH") is the state administrative agency created pursuant to the FHA vested with primary jurisdiction for the administration of affordable housing obligations in accordance with sound regional planning considerations in New Jersey; and

WHEREAS, COAH's Third Round Substantive Rules (NJAC 5:94-1 et seq) implement a growth share approach to affordable housing production which requires affordable housing to be produced in conjunction with market rate residential and nonresidential growth and development within the Borough of Edgewater; and

WHEREAS, Edgewater desires to implement the growth share policies promulgated by COAH in its Third Round Substantive Rules in an effort to foster the production of affordable housing opportunities for qualified low and moderate income households through the year 2014.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council of the Borough of Edgewater that the Land Use and Development Regulations (Chapter 249) are hereby amended as follows:

Section 1. Amend Administrative Checklist For Site Plan Submission. The administrative checklist for preliminary site plan submissions shall be amended to include an additional completeness item requiring and identifying: an affordable housing production plan providing a calculation of the affordable housing obligation for the development based on the proposed development and COAH's third round rules; the manner in which the affordable housing obligation is to be addressed; a floor plan indicating the location of all proposed affordable units where units are to be provided on-site and the manner in which they shall comply with the borough's housing element and fair share plan, growth share ordinance, and applicable COAH regulations, or, if off site units are proposed, the location and manner in which off-site units will be provided and the manner in which they shall affirmatively address the obligation to provide affordable housing units, and their compliance with the borough's housing element and fair share plan, growth share ordinance, and applicable COAH regulations.

Section 2. Growth Share Ordinance. Chapter 249-109 and 110 is hereby amended and new sections designated §249-110.1, 110.2, 110.3, 110.4, 110.5 and 110.6 are added to include a new Article XVI entitled “Growth Share Ordinance” to read as follows:

Article XVI
Growth Share Ordinance

§249-109. Applicability

A. This section of the land use regulations of the Borough of Edgewater sets forth the 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 Borough of Edgewater.

1. Residential Development. Except as exempted in subsection §249-110, all residential development in all zones 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.

2. Nonresidential Development. Except as exempted in subsection §249-110, all nonresidential development in all zones that results in an increase in gross floor area of any existing nonresidential structure or the construction of a new nonresidential structure in accordance with N.J.A.C. 5:94-1 et seq., shall be subject to the “growth share” provisions of this ordinance.

a. The growth share ordinance applies to nonresidential development resulting in a net increase in square footage. To calculate the net increase, any square footage that is demolished is subtracted from new square footage that is proposed for development, by use group.

b. Nonresidential development resulting in the generation of fewer than 25 jobs is subject to development fees rather than the growth share ordinance.

§249-110. Exemptions.

The following exemptions are permitted under the Growth Share Ordinance: All developments that received preliminary or final approval from the planning board and/or board of adjustment prior to the effective date of this ordinance.

§249-110.1. Residential Growth Share Provisions.

A. All residential development which results in the construction of new market rate dwelling units in the Borough of Edgewater, exclusive of those exempted in Section 249-110, shall provide one affordable unit for every 8 market rate units constructed.

B. For residential developments that result in a number of market rate units not evenly divisible by 8, the developer may construct the additional affordable unit on site, off-site or make a payment in lieu of constructing the additional affordable unit. If the developer seeks payment in lieu, the amount of said payment will be established by subtracting any whole multiples of 8 from the total number of market rate residential units being created, dividing any remaining number of units by 8 and multiplying the resulting fraction by \$200,000.

C. All residential development consisting of less than eight residential units may provide one affordable unit on-site or make a payment in lieu of constructing the proportionate fraction of the affordable housing required. If the developer selects the latter option, the amount of said payment shall be established by dividing the number of market rate units by eight and multiplying the resulting fraction by \$200,000.

D. As an alternative to fulfilling the affordable housing requirements set forth in Section 249-110.1C above developers of residential units in the Borough of Edgewater may elect to construct an affordable housing unit elsewhere in the Borough of Edgewater or purchase an existing residential unit in the Borough of Edgewater, provided the unit is identified at the time of site plan submission, and the applicant sets forth the manner in which the unit shall be acquired, the timing of the acquisition, and the manner in which and the timing of the conversion of the units to an affordable unit, all pursuant to the applicable COAH rules at NJAC 5:94-1 et seq.

§249-110.2. Nonresidential Growth Share Provisions.

A. All nonresidential development that results in an increase in gross floor area of any existing nonresidential building or the construction of a new nonresidential building in the Borough of Edgewater shall provide one affordable unit for every 25 jobs that results from the application of standards adopted by COAH (presently found in Appendix E of NJAC 5:94-1 et seq.) and based on use groups, as defined by the International Building Code (IBC) which has been incorporated by reference into the Uniform Construction Code (UCC).

B. All nonresidential development shall provide 1 unit of affordable housing for every 25 jobs created by new or expanded development. Determinations of the number of jobs created shall be based on the new or expanded floor area in the development and the conversion factors, by use group, published by COAH in Appendix E in NJAC 5:94-1 et seq.

C. As an alternative to fulfilling the affordable housing requirements set forth in Section 249-110.2B above, the nonresidential developer may make a payment in lieu of constructing the affordable units. The amount of said payment shall be determined by establishing the number of jobs to be created in a development by using the conversion factors published by COAH in Appendix E in NJAC 5:94-1 et seq, dividing by 25 to determine the number of affordable housing units required and multiplying the resulting figure by \$200,000.

D. For developments resulting in a number of jobs not evenly divisible by 25, the developer may make a payment in lieu of constructing the unit. If a payment is made, said payment shall be established by subtracting any whole multiples of 25 from the total number of jobs being created, dividing any remaining number of jobs by 25 and multiplying the resulting fraction by \$200,000.

§249-110.3 Mixed Use (residential and non-residential) Development Standards

All new mixed use development, or development that results in net increases in existing or approved development, shall be required to provide affordable housing constructed at the sum of the calculation of applying the separate ratios for the residential and non-residential components of the development as set forth above.

§249-110.4. General Provisions for Constructing Affordable Units

A. Affordable housing units being constructed on site shall meet the requirements of Edgewater's affordable housing ordinance and shall be in conformance with COAH's third round rules at NJAC 5:94-1 et seq and the Uniform Housing Affordability Controls at NJAC 5:80-26.1 et seq., including, but not limited to requirements regarding phasing schedule, controls on affordability, low/moderate income split, heating source, maximum rent and/or sales price, affordability average, bedroom distribution and affirmative marketing.

B. To the greatest extent possible affordable housing units being provided within inclusionary developments shall be disbursed throughout inclusionary developments and shall be located within buildings designed to be architecturally indistinguishable from the market rate units otherwise being constructed within the development. To that end, the scale, massing, roof pitch and architectural detailing (such as the selection of exterior materials, doors, windows, etc.) of the buildings containing the affordable housing units shall be similar to and compatible with that of the market rate units.

C. The priority for providing affordable housing shall be as follows:

1. The provision of the required number of affordable units shall be met and required first through on-site construction, and on-site construction shall be treated as the highest and best preference for provision of affordable units. If on-site construction cannot be accomplished, then the obligation shall be met through the creation of affordable units elsewhere within the Borough of Edgewater.

2. A payment in lieu of construction to the Borough of Edgewater shall only be allowed for satisfaction of a fractional obligation of less than one unit. With approval by the Borough, a builder or developer may "round-up" a fractional obligation to provide construction in accordance with the above.

D. Specific regulations for affordable units within a nonresidential development and/or mixed-use development are as follows:

1. Affordable housing units may be constructed within or converted from space above the first floor level in nonresidential mixed-use buildings or may be constructed as new space above the first floor level on the same site as a permitted nonresidential use or development, subject to site plan review by the Board having jurisdiction. This shall only be allowable where residential dwellings situated above the first floor level are permitted pursuant to the district regulations as set forth in the Land Use Ordinance of the Borough.

2. All affordable units shall comply with COAH's rules pertaining to the phasing of construction, integration, split between low and moderate income units, controls on affordability, bedroom distribution, affirmative marketing, heating source, and administration of the affordable units, as set forth in N.J.A.C. 5:94 et seq. as amended, and elsewhere in the Rules.

E. Payments in lieu of the construction of affordable housing shall be allowable only to satisfy a fractional obligation of less than one unit. The cost of construction of one affordable unit is deemed to be \$200,000 per unit. The payment in lieu of construction for satisfaction of a fractional obligation shall be pro-rata in accordance with that cost.

F. Regulations with respect to prior approvals or agreements are as follows:

1. Development that has received preliminary or final approval before the effective date of this ordinance shall not be required to provide affordable housing as set forth herein, unless it was part of the previous approval, or a substantial change in the development is sought. If a substantial change to a prior preliminary or final approval is sought, then the developer shall be

required to comply with this ordinance. For the purpose of preliminary or final approvals existing before the effective date of this ordinance, a “substantial change” to such an approval is defined as follows:

- (a) Five feet of improvements into any yard setback;
- (b) Seven feet in building height;
- (c) One percent in floor area ratio;
- (d) One percent in impervious coverage;
- (e) Five feet in building spacing or location;
- (f) Three parking spaces;
- (g) Five feet in driveway locations;
- (h) One percent in site disturbances;
- (i) Five feet in lot line locations;
- (j) Any change in residential density;
- (k) Any change in use that encompasses more than one percent of the approved building floor area;
- (l) Any new variances pursuant to N.J.S.A. 40-55D-7(c) or (d);
- (m) Any such change enumerated above shall not alter the percentage of low or moderate income housing in an approved project, if applicable.

2. When a prior approval exists, this ordinance shall be applicable as a condition of approval under the following additional circumstances:

- (a) In any application that seeks to extend or modify the expiration date of a development approval;
- (b) In any application that seeks to extend or modify the statutory period of protection as applicable to the particular classification of approval granted.

3. This ordinance shall not change any existing and approved developer’s agreement between a developer and the Borough of Edgewater so long as the agreement contains a negotiated and approved requirement for meeting COAH obligations generated by the development.

G. Other regulations are as follows:

1. Every development applicant shall be required to submit a proposed Affordable Housing Production Plan (AHPP) at the time the application is made. The AHPP shall be a condition of the "completeness" determination. Each AHPP shall be the subject of review for consistency with COAH's Rules, the Fair Housing Act, this Ordinance, and the Borough's Housing Element and Fair Share Plan as proposed to and/or approved by COAH, and such other rules and regulations as may be applicable. This review shall be conducted by the Borough Planner or by such other person or entity as shall be designated to administer the Borough's COAH matters.
2. The AHPP shall be approved by the Board hearing the development application. The Board shall consider the impacts of the proposal relative to its consistency with Borough's Housing Element and Fair Share Plan, this ordinance, and the applicable COAH regulations.
3. Compliance with COAH's Rules and with the approved AHPP shall be a condition of the Board's resolution of approval and may be covered by appropriate performance and maintenance guarantees as with any other required improvement.
4. It shall be the developer's responsibility, at its sole cost and expense, to contract with a COAH-approved and Borough-designated experienced entity for the initial and ongoing administration of the controls on affordability so as to ensure full COAH compliance. The designated administrative entity shall, by February 1st of each year, and as otherwise required by COAH throughout the year, file with the Borough Clerk of the Borough of Edgewater such certifications, reports and/or monitoring forms as may be required by COAH to verify the continuing compliance of each affordable unit with COAH's Rules.
5. Developments covered by this ordinance shall be exempt from the payment of development fees pursuant to any development fee ordinance adopted by the Borough.

§249-110.5. Payment in Lieu Provisions

1. Any payment in lieu amount of \$200,000 shall be derived from the analysis of the subsidy required to create an affordable housing in Edgewater, which analysis shall be on file in the office of Borough Administrator.

2. All payments in lieu of constructing affordable housing shall be deposited by Edgewater into an affordable housing trust fund to be established by Edgewater in conformance with the regulations established by COAH and shall at all times be identifiable from development fees. These funds shall be used by Edgewater in accordance with regulations established by COAH to create new affordable housing opportunities within the physical boundaries of Edgewater.


§249-110.6. Supplemental Regulations.

A. The calculation of affordable housing obligation shall be a completeness item during administrative review of the application. The calculation shall be reviewed by the borough planner or other municipal official designated by the municipality.

B. Compliance with COAH's rules shall be a condition of any approval by the approving authority. The approving authority shall require that the applicant or successor in interest comply with the growth share ordinance, when applicable. The method of compliance shall be enumerated in the approving authority resolution.

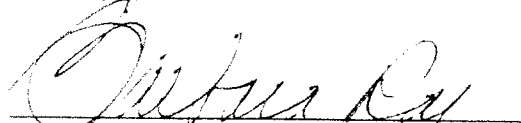
Section 3. Severability. If any section, sentence or any other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this Ordinance but shall be confined in its effect to the section, sentence or other part of this Ordinance directly involved in the controversy which such judgment shall be rendered.

Section 4. Effective Date. This Ordinance shall take effect immediately upon final passage and publication as provided by law.



NANCY MERSE, Mayor

ATTEST:



BARBARA RAE, RMC, CMC
Borough Clerk

Introduced: August 14, 2006
Adopted: *NOVEMBER 13, 2006*
Approved: *NOVEMBER 13, 2006*