

Ordinance of the City of Jersey City, N.J.

File No. Ord. 20-089
Agenda No. 3.1 (1st Reading)
Agenda No. 4.1 (2nd Reading and Final Passage)



AN ORDINANCE CREATING CHAPTER 187 (INCLUSIONARY ZONING) OF THE MUNICIPAL CODE REQUIRING THE INCLUSION OF AFFORDABLE HOUSING UNITS IN ALL DEVELOPMENT PROJECTS WITH RESIDENTIAL WHICH HAVE RECEIVED USE VARIANCES OR INCREASED DENSITY OR HEIGHT.

COUNCIL AS A WHOLE offered and moved adoption of the following ordinance:

WHEREAS, a purpose of the Municipal Land Use Law (hereinafter "the M.L.U.L."), at N.J.S.A. 40:55D-2.a, is to encourage municipal action to guide the appropriate use or development of all lands in this state in a manner which will promote the public health, safety, morals, and general welfare; and

WHEREAS, a purpose of the M.L.U.L., at N.J.S.A. 40:55D-2.e, is to promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment; and

WHEREAS, the City of Jersey City has adopted a Housing Element, as per N.J.S.A. 52:27D-311, the "municipality may provide for its fair share and low and moderate income housing by means of any technique or combination of techniques which provide a realistic opportunity for the provision of the fair share"; and

WHEREAS, the Municipal Council of the City of Jersey City wishes to ensure that as the City grows and attracts market-rate residential development that it also provides opportunity for the City to meet its resident's, current and future, affordable housing needs; and

WHEREAS, an inclusionary ordinance with incentives and requiring a mandatory set-aside of affordable housing on-site is an effective and fair means of encouraging and ensuring the production of affordable housing by private sector developers recognized by the New Jersey Supreme Court in So. Burlington Cty. N.A.A.C.P. v. Mt. Laurel Tp., 92 N.J. 158 ("Mt. Laurel II") and the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.; and

WHEREAS, nearly 40% of Jersey City's households are cost-burdened, defined by Department of Housing and Urban Development (HUD) as paying more than 30% of one's income towards housing, combined with housing values increasing at a much faster rate than income creates difficulties for families paying for other necessities such as food, clothing, transportation and medical care; and

WHEREAS, according the American Community Survey, the population in Jersey City from 2010 to 2017 increased by 7%, or an additional 18,335 residents; and

WHEREAS, the percentage change from 2010 to 2016 for residents who are below poverty level increased by 19%. In that same time frame, the population 65 and over who are below poverty level increased by 32%, and the population under 18 years old determined to be below poverty level increased by 13%; and

WHEREAS, according to the 2016 American Community Survey 45% of renters in Jersey City used more than 30% of their household income to pay rent, that represents a 15% increase from 2010; and **WHEREAS**, according to the 2016 American Community Survey, 32% of all homeowners without a mortgage were paying more than 30% of their monthly income on housing; and

APPROVED AS TO LEGAL FORM

A handwritten signature in black ink, appearing to be "K.B.", written over a horizontal line.

Business Administrator

A handwritten signature in black ink, appearing to be "P.D.", written over a horizontal line.

Corporation Counsel

An ordinance creating Chapter 187 (Inclusionary Zoning) of the Municipal Code requiring the Inclusion of affordable housing units in all development projects with residential which have received use variances or increased density or height.

WHEREAS, increases in permitted residential density or floor area ratio ("F.A.R."), accompanied by a mandatory set-aside of affordable housing, constitute incentives to private developers and compensatory benefits as required by the Fair Housing Act, N.J.S.A. 52:27D-311.h.; and

WHEREAS, amended redevelopment plans prepared and adopted under the Local Housing and Redevelopment Plan, N.J.S.A. 40A.12A-1 et seq., that increase residential density or FAR or permit residential uses in zoning districts restricted against such uses shall require a mandatory set-aside of affordable housing constitute a compensatory benefit for inclusionary development.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City, that Chapter 187 (Inclusionary Zoning) of the Municipal Code be created to read as follows:

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

A. Chapter 187 (Inclusionary Zoning) is hereby created as follows:

Chapter 187 (Inclusionary Zoning)

§ 187-1 – Purpose

The purpose of this ordinance is to create mixed income housing through new construction to assist the City in promoting the creation of Inclusionary Developments and Affordable Housing as the City grows and attracts new market-rate residential development.

§ 187-2 – Definitions for Inclusionary Zoning

The following terms, when used in this Chapter, shall have the following definitions:

APPROVING AUTHORITY means the Director of Housing, Economic Development and Commerce (HEDC), or his/her designee; the Director of Affordable Housing; and the Director of Community Development. In the case of an application for a project in a Redevelopment Area, the Director of the Jersey City Redevelopment Agency, or his/her designee shall also be a member of the Approving Authority.

AFFORDABLE HOUSING means residential housing, which is restricted for occupancy by households whose combined annual income for all members does not exceed eighty percent (80%) of the median income. This term shall refer to the broad classification, and not be confused with more specific terms that define different income divisions.

INCLUSIONARY DEVELOPMENT means a development containing both Affordable Housing and market rate Residential units.

MEDIAN INCOME means the median income by household size for Hudson County, as defined by U.H.A.C.

REDEVELOPMENT PLAN means a plan adopted by the governing body of the City of Jersey City for the redevelopment or rehabilitation of all or any part of a redevelopment area, or area in need of rehabilitation, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A: 12A-1 et seq.

RESIDENTIAL means any real property and the improvements, buildings, structures or house thereon, whether single or multi-family, whether or not owner occupied, used for residential purposes.

UNIFORM HOUSING AFFORDABILITY CONTROLS (U.H.A.C) means the affordability standards established under N.J.A.C. 5:80-26.1 et seq.

§ 187-3 – Mandatory Set-Aside.

An ordinance creating Chapter 187 (Inclusionary Zoning) of the Municipal Code requiring the Inclusion of affordable housing units in all development projects with residential which have received use variances or increased density or height.

- A. Applicability – After the effective date of this Chapter, Compliance with this Article is required for all properties/developments with a residential component that are requesting and/or receiving 1) an additional five (5) units or 2) five thousand (5,000) square feet of additional residential floor area beyond the permitted existing zoning through:
1. A variance pursuant to N.J.S.A. 40:55D-70.c or, N.J.S.A. 40:55D-70.d; or
 2. A Redevelopment Plan amendment.
- B. Exemptions
1. Developments of fifteen (15) Residential units or less.
 2. Any project undertaken by the Jersey City Housing Authority.
 3. Rezoning initiated by the City as a result of a Master Plan Update or Amendment
- C. Inclusionary Housing Set-Aside
1. Applicable developments shall set aside not less than twenty percent (20%) of the total number of Residential units (permitted plus additional), as identified in Section A herein, as Affordable Housing. This requirement shall apply to both rental Residential units and all forms of ownership. All Affordable Housing Residential units shall be consistent with Chapter 188 of the Jersey City Code.
 2. The twenty percent (20%) set aside shall be provided on-site in accordance with the New Jersey Uniform Housing Affordability Controls (U.H.A.C.) unless otherwise by the Approving Authority as set forth herein.
 3. A minimum of five percent (5%) of the Affordable Housing requirement must be provided on-site regardless of off-site, payments in lieu, and community contributions.
 4. Rounding – When any calculation of the mandatory set aside results in a fractional income-restricted Affordable Housing Residential unit, the fraction shall be rounded up if the fraction is exactly one half or higher. This shall mean that the Affordable Housing Residential unit shall be provided. Where the fraction is less than one half, the developer shall provide a payment in lieu of the fractional unit. The payment shall be calculated based on a pro rata basis according to the payment in lieu schedule in this chapter. ~~more than one half and rounded down if less than one half percent. The fraction shall be rounded up if exactly one half.~~
- D. All Inclusionary Zoning applications shall be reviewed and approved by the Approving Authority. The Approving Authority shall consult with the Councilperson for the ward in which the project is to be built. The determinations of the Approving Authority shall be communicated to the requesting entity via letter with the signatures of a majority of the members of the Approving Authority.
- E. The required Affordable Housing Residential units shall be constructed on-site and integrated with the market rate Residential units unless granted relief by the Approving Authority.
- F. All Inclusionary Zoning applications will be formalized with an Affordable Housing Agreement, as required in Chapter 188 of the Jersey City Code. The Affordable Housing Agreement shall be a requirement to be included in any Planning or Zoning Board application that triggers the Inclusionary Housing Mandatory Set-Aside.
- G. Notwithstanding anything herein to the contrary, the City Council may, by resolution, permit a reduction in the number of Affordable Housing Residential units if it determines that such reduction will result in Affordable Housing Residential units that, without such reduction, would not otherwise be constructed.

An ordinance creating Chapter 187 (Inclusionary Zoning) of the Municipal Code requiring the Inclusion of affordable housing units in all development projects with residential which have received use variances or increased density or height.

The Approving Authority is authorized to approve off-site Affordable Housing Residential units for some of the obligation only upon written findings, supported by the record, that such off-site Affordable Housing Residential units will further the housing policies of the City of Jersey City in accordance with the following factors, all of which must be met:

- A. The developer/applicant shall pay Five Thousand Dollars (\$5,000) to the City of Jersey City to cover the administrative fees required for the fiscal analysis study to determine how the proposed off-site Affordable Housing Residential units compares in value to the required on-site Affordable Housing Residential units.
- B. **Off-site Affordable Housing Residential units are within the same Tier on the map entitled "INCLUSIONARY ZONING: Payment-in-lieu of Creating Affordable Housing" as the development.**
- C. **The off-site location is available, approvable, developable, and suitable in accordance with N.J.A.C.5:93-1.3, Definitions. In addition, the off-site location will NOT require a variance for density, floor area ratio (F.A.R.), or height.**
- D. **The specific location for the off-site units is provided at the time of request for such approval.**
- E. **The Affordable Housing Residential units to be provided off-site are of comparable or superior size and quality to those that would be provided on-site.**
- F. **Off-site Affordable Housing Residential units shall be developed either prior to or simultaneously with on-site Residential market rate units in accordance with N.J.A.C.5:93-5.6(d).**
- G. **The off-site Affordable Housing Residential units shall meet all applicable requirements of the Jersey City Code Chapter 188.**

§ 187-5 – Payment-in-lieu of Creating Affordable Housing Units

- A. At the discretion of the Approving Authority, a developer may provide a payment-in-lieu of constructing the Affordable Housing obligation into the City of Jersey City's Affordable Housing Trust Fund. The opportunity to provide a payment-in-lieu of constructing on-site Affordable Housing Residential units is not intended to be and should not be construed as a right available to developers at their sole option. The policy of this Article favors construction of on-site Affordable Housing Residential units.
- B. The developer/applicant shall pay Five Thousand Dollars (\$5,000) to the City of Jersey City to cover the administrative fees required for a fiscal analysis study to determine whether the proposal can absorb the on-site Affordable Housing requirement through the potential gain in land value resulting from increased units.
- C. The applicant shall demonstrate to the Approving Authority that the development of on-site Affordable Housing Residential units is not feasible or not needed. The Approving Authority should consider the following metrics when determining if an application should be allowed to use the payment-in-lieu option. This list is not exhaustive; the Approving Authority can take into consideration any other relevant factors when making a determination to include:
 - 1. The site is more than a one (1)-mile radius outside of any existing or proposed light rail, PATH station, or Bus Rapid Transit stops.
 - 2. The site is in a census tract that already has a majority of units (fifty percent (50%) or more) available where the median-income of a family with four (4) individuals can afford to live without paying more than thirty percent (30%) of their monthly income on housing costs.
- D. The amount of the payment-in-lieu figure shall be based upon a tiered payment-in-lieu system that shall increase two percent (2%) every year from the year this ordinance was adopted beginning on January 1. The boundaries of the tiered areas shall be established on the map entitled "INCLUSIONARY ZONING: Payment-in-lieu of Creating Affordable Housing." The Division of City Planning shall update this map annually to properly represent current housing characteristics and the new map shall be approved by the City Council by resolution each January. A map shall remain in effect until a new map is approved by the City Council. The map shall be on file and available for public inspection with the Division of Affordable Housing. There shall be no instance where the payment-in-lieu is any less than what is listed within the below requirements (including any annual increases). The initial tiered payment-in-lieu shall be the following:

An ordinance creating Chapter 187 (Inclusionary Zoning) of the Municipal Code requiring the Inclusion of affordable housing units in all development projects with residential which have received use variances or increased density or height.

1. Tier 1 shall pay Twenty-Five Thousand Dollars (\$25,000) a unit
 2. Tier 2 shall pay Thirty-Five Thousand Dollars (\$35,000) a unit
 3. Tier 3 shall pay Fifty Thousand Dollars (\$50,000) a unit
 4. Tier 4 shall pay Seventy-Five Thousand Dollars (\$75,000) a unit
 5. Tier 5 shall pay One Hundred Thousand Dollars (\$100,000) a unit
- E. The approval of any payment-in-lieu benefit shall be conditioned upon the developer and the City entering into a developer's agreement that details the manner in which the contribution will be fulfilled. That developer's agreement shall also be made a part of the Required Affordable Housing Agreement, required in §187-7 Compliance.

§ 187-6 – Community Benefits in lieu of Creating Affordable Housing Units

- A. The Approving Authority is permitted to approve a reduction in the mandatory on-site Affordable Housing requirement relative to the value of community benefits proposed by the developer. A reduction in the required Affordable Housing for community benefits will only be considered for projects in a redevelopment area and must also meet the following criteria:
1. The developer/applicant shall pay Five Thousand Dollars (\$5,000) to the City of Jersey City to cover the administrative fees required for the fiscal analysis study to determine the value of the proposed community benefit in comparison to the gain in land value resulting from a Redevelopment Plan amendment.
 2. Eligible community benefits may consist of, but are not limited to, the following: construction of a public facility, such as, but not limited to, public schools, public recreational facilities, government offices, fire stations, police stations, public parking garages, public transportation systems or facilities, roads and water infrastructure, etc.
- B. The approval of any community benefit shall be conditioned upon the developer entering into a redevelopment agreement that details the manner in which the contribution will be fulfilled. That redevelopment agreement shall also be an exhibit to the Required Affordable Housing Agreement, required in §187-7 – Compliance.

§ 187-7 – Compliance

- A. Inclusionary Affordable Housing Residential units and developments containing one or more Affordable Housing Residential unit(s) shall meet all applicable requirements of the Jersey City Code Chapter 188.
- B. Developers shall submit an Affordable Housing Agreement outlined within Chapter 188 of the Jersey City Code to the satisfaction of the Division of Affordable Housing.
- C. Developers shall be required to comply with the "Duties of the Developer" as outlined in Chapter 188 of the Jersey City Code to the satisfaction of the Division of Affordable Housing.
- D. Developers shall comply with eligibility determination procedures by providing adequate documentation as set forth within Chapter 188 to the satisfaction of the Division of Affordable Housing.
- E. The Division of Affordable Housing shall be responsible for monitoring compliance and recordkeeping for all Affordable Housing Agreements produced as a result of this Article.

§ 187-8 – Waiver by the City Council

An ordinance creating Chapter 187 (Inclusionary Zoning) of the Municipal Code requiring the Inclusion of affordable housing units in all development projects with residential which have received use variances or increased density or height.

The terms of this Chapter may be waived by the City Council.

§ 187-9 – Violation, default and remedies

Upon a violation of any of the provisions of the Affordable Housing Agreement, the Director of Affordable Housing shall give written notice to the developer specifying the nature of the violation and require corrective action within a reasonable period of time as set forth in Chapter 188. If the developer does not reply or correct the violation within the time specified, the developer shall, for each and every violation, be fined up to a maximum of Two Thousand Dollars (\$2,000) a day that such violation continues after such notice.

§ 187-10. - Severability.

If any Section, Subsection, sentence, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

- B. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.**
- C. The City Clerk and the Corporation Counsel may change any chapter numbers, article numbers and section numbers if codification of this ordinance reveals a conflict between those numbers and the existing code, in order to avoid confusion and possible repeals of existing provisions.**
- D. This ordinance shall take effect January 1, 2021.**
- E. This ordinance shall be a part of the Jersey City Code as though codified and incorporated in the official copies of the Jersey City Code.**

An ordinance creating Chapter 187 (Inclusionary Zoning) of the Municipal Code requiring the Inclusion of affordable housing units in all development projects with residential which have received use variances or increased density or height.

RECORD OF COUNCIL VOTE ON INTRODUCTION – Oct 7 2020						
RIDLEY	AYE	SALEH	AYE	LAVARRO	NAY	7-2
PRINZ-AREY	AYE	SOLOMON	NAY	RIVERA	AYE	
BOGGIANO	AYE	ROBINSON	AYE	WATTERMAN, PRES	AYE	

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING – Oct 21 2020						
RIDLEY	AYE	SALEH	AYE	LAVARRO	AYE	9-0
PRINZ-AREY	AYE	SOLOMON	AYE	RIVERA	AYE	
BOGGIANO	AYE	ROBINSON	AYE	WATTERMAN, PRES.	AYE	

SPEAKERS:

Aakash Patel
Tehmim Zafar
Badi Sumakeita
Shruti Patel
Brian Maoya
Arian A. Ghainda
Alvin Ghainda
Gerry McCann
Surujdai G. Ghainda
Carmen Torres-Izquierdo
Brandon Ramdayal
Robinson Holloway
John Frohling
Gregg Lanez
Brian Rans
Hector Oseguera
Keisha Vidal
Sasha Kimiatek
Jeanne Daly
Jena Barchas-Lichtenstein
Katia Oltmann
Rebecca Missel
Adam Cohen
Andrew Zhang
Moriah Kinberg
Mary Beth Botts
Amanda Luchun
Eleana Little
Bassam Gergi
Dana Patton
Meredith Sonnen
Patrick Ambrossi
Hana Katz
Jessica Taube
Scott Welfel
June Jones
Jerome Choice
Melika Behrooz
Jenny Tang
Ryan Moser
Asish Patel
Meron Addisu
Rafael Martinez
Amy Torres
Elayna Thompson

An ordinance creating Chapter 187 (Inclusionary Zoning) of the Municipal Code requiring the Inclusion of affordable housing units in all development projects with residential which have received use variances or increased density or height.

Cynthia Hadjiyannis
 Kern Weissman
 Josue Velasquez
 Pam Johnson
 Brian Collins
 Jocelyn Patrick
 Mario Moody
 Tashany Brown
 Marc Devens
 Carmen Hermo
 Rob Menendez
 Cris Gadsden
 Mangelin Rivera
 Sarah Ordway
 Arden Donnelly
 Gary Spingarn
 Shemika Austin
 Yvonne Balcer
 Lily Fleming
 Mashuna Harley

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY – Oct 21 2020						
RIDLEY	AYE	SALEH	AYE	LAVARRO	AYE	9-0
PRINZ-AREY	AYE	SOLOMON	AYE	RIVERA	AYE	
BOGGIANO	AYE	ROBINSON	AYE	WATTERMANN, PRES.	AYE	

RECORD OF FINAL COUNCIL VOTE – Oct 21 2020						
RIDLEY	AYE	SALEH	AYE	LAVARRO	NAY	7-2
PRINZ-AREY	AYE	SOLOMON	NAY	RIVERA	AYE	
BOGGIANO	AYE	ROBINSON	AYE	WATTERMANN, PRES.	AYE	

Adopted on first reading of the Council of Jersey City, N.J. on Oct 7 2020

Adopted on second and final reading after hearing on Oct 21 2020

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on Oct 21 2020



City Clerk



Joyce E. Watterman, President of Council
 Approved: Oct 21 2020

Amendment(s):

Amendment to the Inclusionary Housing Set-Aside #
 4 - Rounding. The amendments are underlined in
 bold and italics.



Steven M. Fulop, Mayor
 Date to Mayor: Oct 22 2020
 Approved: Oct 28 2020