

A
ORDINANCE NO. -2005

**AN ORDINANCE AMENDING AND SUPPLEMENTING
CHAPTER 170 OF THE GENERAL CODE (FORMERLY
CHAPTER 16 OF THE REVISED GENERAL ORDINANCES)
OF THE TOWNSHIP OF LIVINGSTON TO ESTABLISH
GROWTH SHARE REQUIREMENTS FOR ALL NEW
DEVELOPMENT AND CREATE A PAYMENT IN LIEU FUND**

BE IT ORDAINED, by the Township Council of the Township of Livingston, in the
County of Essex and State of New Jersey, as follows:

SECTION 1. Chapter 170 of the General Code of the Township of Livingston is hereby
amended to add a new Section 170-87(AA) to read as follows:

AA. Growth share requirements. Development in all zoning districts shall be subject to
the growth share requirements in Section 170-125.1.

SECTION 2. Chapter 170 of the General Code of the Township of Livingston is hereby
amended to add a new Section 170-88(M) to read as follows:

M. Affordable housing. Affordable housing units proposed to be developed in order to
satisfy the growth share requirements in Section 170-125.1 shall be permitted as a
conditional use in all zoning districts, subject to the standards and requirements in
Section 170-125.1(F).

SECTION 3. Chapter 170 of the General Code of the Township of Livingston is hereby
amended to add new Sections 170-125.1 and 125.2 to read as follows:

§170-125.1. Growth Share Requirements.

A. Purpose. The purpose of this Section 170-125.1 is to require all new development to
address the growth share affordable housing obligation generated by such development as
authorized by N.J.A.C. 5:94-3.4.

B. Applicability. The provisions of this Section 170-125.1 shall apply to all
development activity that creates any growth share obligation for Livingston Township as
determined by the regulations of the New Jersey Council on Affordable Housing in
N.J.A.C. 5:94, regardless of whether the development requires approval by the Planning
Board or Board of Adjustment. The applicability of this Section 170-125.1 shall be
determined independent of the applicability of the development fee requirement in

Article XV.

C. Exemptions. The provisions of this Section 170-125.1 shall not apply to development activity that does not create any growth share obligation for Livingston Township as determined by the regulations of the New Jersey Council on Affordable Housing in N.J.A.C. 5:94. Exempt development activity includes, but is not necessarily limited to, the following:

1. Residential renovations and additions.
2. Replacement residences that do not result in a net increase in the number of dwelling units.
3. Nonresidential renovations and improvements that do not result in any increase in building floor area or involve a change in use that creates a growth share obligation as determined under Section 170-125.1(E).
4. Development for which certificates of occupancy have been issued prior to the effective date hereof. However, if certificates of occupancy have been issued for part of a development prior to such effective date, then the growth share affordable housing requirement shall be calculated and imposed based on the number of certificates of occupancy issued after the effective date.

D. Residential Development. All new residential development shall be subject to the following growth share affordable housing requirements:

1. In the case of residential development involving the creation and/or development of 6 or more dwelling units and/or single-family building lots, 1 affordable housing unit shall be provided for every 6 dwelling units and/or single-family building lots. In the case of a fractional affordable housing requirement, the number shall be rounded up to the next whole number. The required affordable housing unit(s) shall be constructed on-site, unless the Township approves a proposal involving the provision of affordable housing elsewhere within Livingston Township. Construction of the affordable housing unit(s) shall be subject to the standards and requirements in Section 170-125.1(F).
2. In the case of residential development involving the creation of fewer than 6 dwelling units and/or single-family building lots, the developer shall be required to make a payment in lieu of providing affordable housing, which shall be placed in the Payment in Lieu Fund governed by Section 170-125.2. In accordance with N.J.A.C. 5:94-4.4(c), the amount of the required payment shall be negotiated with the Township based on consideration of the anticipated cost of providing affordable housing units. The minimum payment amount shall be calculated based on \$300,000 multiplied by the fractional growth share affordable housing requirement. 50% of the required payment shall be made prior to issuance of a building permit, and the remaining 50% shall be paid prior to issuance of a certificate of occupancy; provided,

however, that if payment was not made in connection with issuance of a building permit, then the entire amount shall be paid prior to issuance of a certificate of occupancy.

3. The requirements of this Section 170-125.1(D) shall apply to all residential dwelling units for which certificates of occupancy have not been issued as of the effective date hereof. In the case of residential development for which subdivision and/or site plan approval was granted prior to the effective date, the Planning Board may on application waive the requirement in Section 170-125.1(D)(1) for affordable housing to be provided on-site and authorize payments in lieu pursuant to Section 170-125.1(D)(2).

E. Non-residential Development. All non-residential development shall be subject to a growth share affordable housing requirement based on the net increase in square footage and the use category as follows:

1. The growth share affordable housing requirement shall be calculated based on the attached Schedule.
2. The growth share affordable housing requirement as so calculated shall be rounded up to the next whole number, except where the calculated growth share requirement is less than .5.
3. If the growth share affordable housing requirement is less than .5, then the developer shall make a payment in lieu of providing affordable housing, which shall be placed in the Payment in Lieu Fund governed by Section 170-125.2. In accordance with N.J.A.C. 5:94-4.4(c), the amount of the required payment shall be negotiated with the Township based on consideration of the anticipated cost of providing affordable housing units. The minimum payment amount shall be calculated based on \$300,000 multiplied by the fractional growth share affordable housing requirement. 50% of the required payment shall be made prior to issuance of a building permit, and the remaining 50% shall be paid prior to issuance of a certificate of occupancy; provided, however, that if payment was not made in connection with issuance of a building permit, then the entire amount shall be paid prior to issuance of a certificate of occupancy.
4. In all situations not covered by sub-paragraph (E)(3), the developer shall provide the required affordable housing unit(s) on-site, unless the Township approves a proposal involving the provision of affordable housing elsewhere within Livingston Township. Construction of the required affordable housing unit(s) shall be subject to the standards and requirements in Section 170-125.1(F).
5. The requirements of this Section 170-125.1(E) shall apply to all nonresidential development for which certificates of occupancy have not yet been issued as of the effective date hereof. In the case of nonresidential development for which subdivision and/or site plan approval was granted prior to the effective date, the

Planning Board may on application waive the requirement in Section 170-125.1(E)(4) for affordable housing to be provided on-site and authorize payments in lieu pursuant to Section 170-125.1(E)(3).

F. Affordable Housing Development Criteria. As set forth in Section 170-88(M), affordable housing unit(s) required to be provided by this Section 170-125.1 are authorized as conditional uses, and they shall be subject to following requirements:

1. All affordable housing units in residential developments including affordable housing units shall be subject to the requirements applicable to inclusionary developments in Section 170-126, the controls on affordability in Section 170-127 and the affirmative marketing requirements in Section 170-128.
2. All affordable housing units must qualify as affordable units under the COAH regulations.
3. Whenever affordable housing is proposed to be provided on a site, site plan approval shall be needed and, in addition to all other zoning and land use regulations, required affordable housing units shall be subject to the following:
 - (a) When constructed as part of a single-family residential development, the affordable units may be included in two-family or multifamily structures, provided that the structure shall be designed to be compatible in appearance with adjacent single-family residential structures.
 - (b) When constructed as part of a non-residential development, the affordable units shall be designed to be compatible with the nonresidential use.
 - (c) Off-street parking shall be provided in accordance with the requirements for all uses on the property.
 - (d) Landscaping shall be included to provide reasonable buffering and screening from adjacent land uses.
 - (e) If 4 or more affordable housing units are provided, then at least 25% of the units shall be designed for accessibility by handicapped persons in accordance with the Barrier Free Subcode in N.J.A.C. 5:23-7.

G. Administration. The Township Manager is hereby authorized and directed to administer the provisions of this Section 170-125.1, including the authority to negotiate payment in lieu fees and off-site affordable housing proposals as provided for herein.

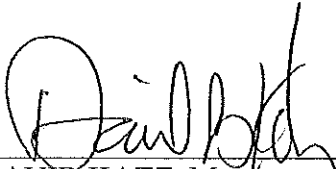
§170-125.2. Payment in Lieu Fund.

A. There is hereby established a Payment in Lieu Fund to be maintained separately from the Housing Trust Fund established by the Section 170-136.

B. The funds in the Payment in Lieu Fund may only be used in accordance with an approved spending plan and for the same purposes as the Housing Trust Fund as specified in Section 170-136, except that such funds may only be used for purposes involving the provision of affordable housing within the Township.

SECTION 4. Except as hereby amended and supplemented, the General Code of the Township of Livingston shall remain in full force and effect.

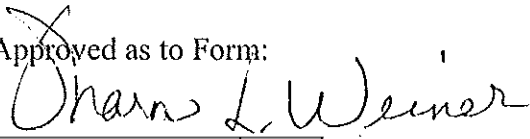
SECTION 5. This Ordinance shall take effect upon final passage and publication in accordance with the law.



DAVID KATZ, Mayor



GLEN TURTLETAUB, Clerk

Approved as to Form:


Sharon L. Weiner, Esq.
Township Attorney

Sharon L. Weiner, Esq.
Township Attorney

Approved: 9/19/05