

ORDINANCE NO. 31 -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 CLARIFY  
SECTION 170-125.1 CONCERNING AFFORDABLE  
HOUSING GROWTH SHARE REQUIREMENTS

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 amend Section 170-125.1, with deleted text in brackets and added text underlined  
and in bold, 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~~], **except as expressly exempted herein.**

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, unless the development is otherwise exempted herein.
5. Any development for which prior to September 19, 2005: (i) final subdivision and/or site plan approval was granted; or (ii) preliminary subdivision and/or site plan approval was granted and the statutory vested rights period under N.J.S.A. 40:55D-49 remains in effect. This exemption shall not apply in the event of the subsequent approval of an application for amended approval involving a substantial change in the development proposal.
6. Any development undertaken pursuant to and consistent with a Mt. Laurel Development Agreement or Redevelopment Agreement entered into with the Township of Livingston unless specifically provided for to the contrary therein.

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).

B. 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.

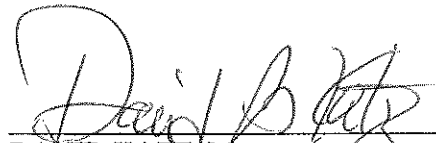
G. Administration. The Township Manager is hereby authorized and directed to administer the provisions of this Section 170-125.1, including the authority to negotiate payment in lieu fees and off-site affordable housing proposals as provided for herein.

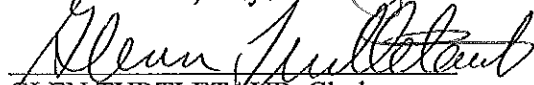
H. Severability. In the event that any provision of this Section 170-125.1 is held to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not effect the validity and enforceability of the remaining provisions of this Section 170-125.1, it being the intent the the provisions hereof are severable.

SECTION 2. Except as hereby amended and supplemented, the General Code of the

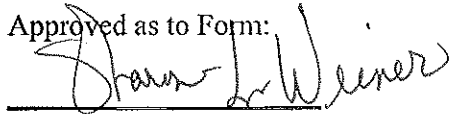
Township of Livingston shall remain in full force and effect.

SECTION 3. This Ordinance shall take effect upon final passage and publication in accordance with the law.

  
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DAVID KATZ, Mayor

  
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GLEN TURTLETAUB, Clerk

Approved as to Form:

  
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Sharon L. Weiner, Esq.  
Township Attorney

Sharon L. Weiner, Esq.  
Township Attorney

Approved: 10/24/05

Use Group	Description	Square Feet Generating One Affordable Unit	Jobs Per 1,000 Square Feet
B	Office buildings. Places where business transactions of all kinds occur. Includes banks, corporate offices, government offices, professional offices, car showrooms and outpatient clinics.	8,333	3
M	Mercantile uses. Buildings used to display and sell products. Includes retail stores, strip malls, shops and gas stations.	25,000	1
F	Factories where people make, process, or assemble products. Includes automobile manufacturers, electric power plants, foundries, and incinerators. F use group includes F1 and F2.	12,500	2
S	Storage uses. Includes warehouses, parking garages, lumberyards, and aircraft hangers. S group includes S1 and S2.	125,000	0.2
H	High Hazard manufacturing, processing, generation and storage uses. H group includes H1, H2, H3, H4 and H5.	25,000	1
A1	Assembly uses including theaters, concert halls and TV studios.	12,500	2
A2	Assembly uses including casinos, night clubs, restaurants and taverns.	8,333	3
A3	Assembly uses including libraries, lecture halls, arcades, galleries, bowling alleys, funeral parlors, gymnasiums and museums but excluding houses of worship	8,333	3
A4	Assembly uses including arenas, skating rinks and pools.	8,333	3
A5	Assembly uses including bleachers, grandstands, amusement park structures and stadiums	Exclude	Exclude
E	Schools K - 12	25,000	1
I	Institutional uses such as hospitals, nursing homes, assisted living facilities and jails. I group includes I1, I2, I3 and I4.	12,500	2
RI	Hotels and motels (includes dormitories)	31,250	0.8
U	Miscellaneous uses. Fences tanks, barns, agricultural buildings, sheds, greenhouses, etc.	Exclude	Exclude
In the case of mixed-use development, the jobs calculation will be assigned in proportion to the square footage of each use in the mixed use development.			