

**PENDING ORDINANCE O-26-06**  
**TOWNSHIP OF MONTCLAIR**

**AN ORDINANCE TO AMEND CHAPTER 347 ZONING OF THE CODE OF THE TOWNSHIP OF MONTCLAIR, NEW JERSEY**

February 10, 2026 (date of introduction)  
February 24, 2026 (date of public hearing)

**WHEREAS**, pursuant to N.J.S.A. 52:27D-313(a), the Township Council of the Township of Montclair petitioned the Affordable Housing Dispute Resolution Program (“Program”) to review and approve its Fourth Round Housing Element and Fair Share Plan by and through a Complaint for Declaratory Judgment, Docket No. ESX-L-000297-25; and

**WHEREAS**, the Township of Montclair Planning Board has adopted a HEFSP pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. and the Fair Share Plan describes the ways the municipality shall address its fair share of very low-, low- and moderate-income housing as approved by the Superior Court and documented in the Housing Element; and

**WHEREAS**, the Township of Montclair’s Fourth Round Housing Element and Fair Share Plan promotes an affordable housing program pursuant to P.L. 2024, c.2, which amended the Fair Housing Act (N.J.S.A. 52:27D-301, et. seq.); and

**WHEREAS**, Chapter 65 Affordable Housing of the Montclair Code must be amended to implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of P.L 2024, Chapter 2, the FHA, N.J.A.C. 5:99, NJ Supreme Court upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC at N.J.A.C. 5:80-26.1, as may be amended and supplemented;

**NOW, THEREFORE BE IT ORDAINED** by the Mayor and Council of the Township of Montclair, in the County of Essex, State of New Jersey that it hereby amends Chapter 347 of the Montclair Code as follows:

**ARTICLE XXVI. Inclusionary Zoning**

**§ 347-151. Title.**

This article shall be known and may be referred to as the "Inclusionary Zoning Ordinance of the Township of Montclair."

**§ 347-152. Definitions.**

The following definitions shall apply to the interpretation and construction of this article:

**AFFORDABLE HOUSING TRUST FUND** — ~~A fund established for the receipt and management of cash in lieu contributions received by the Township in accordance with the provisions of this article. The Affordable Housing Fund shall be utilized solely for the rehabilitation, construction, acquisition and maintenance of affordable housing and for the cost of administering programs consistent with the purposes of this article. A separate, interest-bearing account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from~~

**TOWNSHIP OF MONTCLAIR  
PENDING ORDINANCE O-26-06**

affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this chapter. As used in this chapter, “municipal affordable housing trust fund” shall also mean a “municipal development trust fund” and a “municipal development fee Trust fund.”

**AFFORDABLE** - A sales price or rent within the economic means of a low- or moderate-income household, as defined in the UHAC as, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.7 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.13.

~~**AFFORDABLE UNIT** — A unit proposed or created pursuant to the Act that is pledged to remain affordable in perpetuity to eligible households (as defined below) including units created municipal affordable housing trust funds.~~

~~**DEVELOPER** — Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development, including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land. The legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land~~

~~**DEVELOPMENT** — The division of a parcel of land into two or more parcels or the construction of any residential building within the Township, including, without limitation, a planned unit development or approved subdivision. The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.~~

~~**ELIGIBLE HOUSEHOLD** — Any household whose total income does not exceed the designated percentage of the median income for households as determined in accordance with applicable state and federal regulations and guidelines, or which meets the criteria established for a municipal housing program pursuant to Montclair Code § 65-3.~~

~~**HOUSING DEVELOPER** — Any person who seeks a permit or approval for the construction of a development which includes one or more residential dwelling units.~~

**HOUSING PROJECT** - A project, or distinct portion of a project, which is designed and intended to provide decent, safe, and sanitary dwellings, apartments, or other living accommodations for persons of low- and moderate-income; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes. The term “housing project” may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

**INCLUSIONARY DEVELOPMENT** - A residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate-

income households.

PAYMENT IN LIEU OF CONSTRUCTING AFFORDABLE UNITS - The payment of funds to the municipality by a developer when affordable units are not produced on a site zoned for an inclusionary development.

SUPPORTIVE HOUSING – A dwelling unit that is reserved for individuals and families with special needs, such as those who have disabilities or are unhoused, and who shall occupy such housing as their usual and permanent residence, combined with flexible support services tailored to the individual’s needs.

**§ 347-153. Scope.**

- A. To ensure the sufficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, this article shall apply to all residential development, including mixed-use development.
- B. This article shall not apply to residential expansions, renovations, replacement residences or other residential development that does not result in a net increase in the number of dwelling units. ~~Furthermore, it shall not apply to developments containing four or fewer dwelling units.~~ All subdivision and site plan approvals of qualifying residential developments in the aforementioned zones shall be conditioned upon compliance with this article. ~~Where a developer demolishes existing dwelling units and builds new dwelling units on the same site, this article shall apply only if the net number of dwelling units is five or more.~~ This article may be superseded in areas in need of redevelopment or rehabilitation by a redevelopment plan duly adopted pursuant to N.J.S.A. 40A:12A-1 et seq.

**§ 347-154. Certificates of occupancy.**

No certificate of occupancy will be issued for any housing unit, whether market-rate or affordable, within the development unless the following items have been completed and submitted to the Township:

- A. A description of the number of affordable units in the development, the number of bedrooms per unit, the location of all affordable units, and the projected sales prices or rents of each affordable unit.
- B. A deed restriction in a form approved by the Township Attorney executed and recorded in the Essex County Registrar's office. For ownership units, the deed restriction shall include a covenant in favor of the Township limiting the initial sale and subsequent resale of affordable units to eligible households. For rental units, the deed restriction shall include a covenant limiting the rental of affordable units to eligible households.

**§ 347-155. Restrictions on affordable units.**

No person shall sell, lease or rent an affordable unit except to eligible households.

**§ 347-156. Applicability.**

- A. Any development containing five or more dwelling units is required to include at least 20% or one in five of the total number of units within the development as affordable units except that any development that is approved through a use variance, per N.J.S.A. 40:55D-70d, and containing four or more dwelling units, shall include at least 25% or one in four of the total

**TOWNSHIP OF MONTCLAIR  
PENDING ORDINANCE O-26-06**

number of units within the development as affordable units..

~~(1) The following criteria apply:~~

~~(a) At least half of the affordable units within each bedroom distribution shall be low-income units, and the remainder may be moderate income units. If there is only one affordable unit in the development, it must be a low-income unit.~~

~~(b) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:~~

~~[1] The combined number of efficiency and one-bedroom units is no greater than 20% of the affordable units.~~

~~[2] At least 30% of the affordable units are two-bedroom units.~~

~~[3] At least 20% of the affordable units are three-bedroom units.~~

~~[4] The remainder may be allocated at the discretion of the developer.~~

~~(2) For developments containing three affordable units, two shall be two-bedroom units, and one shall be a three-bedroom unit. For developments containing four affordable units, two shall be two-bedroom units, and two shall be three-bedroom units. For developments containing five affordable units, one shall be a one-bedroom unit, three shall be two-bedroom units, and one shall be a three-bedroom unit.~~

B. All affordable units created through this inclusionary zoning ordinance shall be developed in accordance with the requirements set forth in Montclair Code §65 Affordable Housing.

(3)C. At least 15% of new affordable units created through this inclusionary zoning ordinance shall be permanent supportive housing. When calculating this number, percentages of .5 and above shall be rounded up and percentages of below .5 shall be rounded down. Occupants of these units shall be drawn from a separate waiting list maintained by the Township and shall include any ADA improvements required by the anticipated occupant.

B-D. When the total number of units in the development divided by five results in a fraction, the developer shall provide an additional affordable unit on-site, or an affordable unit off-site in a location approved by the Montclair Housing Commission, or a cash-in-lieu financial contribution to the Affordable Housing Trust Fund as set forth in § 347-161 to fulfill the fractional obligation. For example, if the total number of units in the development is eight, there would be an obligation to provide one affordable unit on-site and the obligation to provide an additional affordable unit on-site or off-site or a cash-in-lieu payment for the fractional obligation.

~~§ 347-157. Design and construction of affordable units. [Amended 6-1-2021 by Ord. No. O-21-09]~~

~~Affordable units provided on-site shall be reasonably dispersed throughout the development and shall be designed and constructed to be substantially similar in size and quality as on-site market units unless specifically permitted otherwise by the approving Board. All affordable units shall comply with applicable rules and guidelines pertaining to the phasing, integration, low-~~

**TOWNSHIP OF MONTCLAIR  
PENDING ORDINANCE O-26-06**

~~/moderate income split, controls on affordability, bedroom distribution, affirmative marketing, heating source and administration of the affordable units, as set forth in N.J.A.C. 5:94-4.4, N.J.A.C. 5:80-26.1, or any other applicable rules or programs.~~

~~**§ 347-157.1 Affordability Controls.**~~

~~A. All affordable units shall be subject to affordability controls to ensure the maintenance of housing that is affordable to low and moderate income households for a period of not less than 40 years for newly created rental units, 30 years for for-sale units, and 30 years for housing units for which affordability controls are extended for a new term of affordability, provided that the minimum extension term may be limited to no less than 20 years as long as the original and extended terms, in combination, total at least 60 years.~~

~~B. Any 100 percent affordable rental property shall have a right to extinguish a deed restriction regardless of original length, beginning 30 years following the start of the deed restriction, provided a refinancing or rehabilitation, or both, for the purpose of preservation is commenced and that a new deed restriction of at least 30 years is provided.~~

**§ 347-158. Completion schedule.**

Affordable units shall be built in accordance with the following schedule:

<b>Percent of Market-Rate Units Completed</b>	<b>Minimum Percentage of Low/Moderate-Income Units Completed</b>
25%	0%
25% + 1 unit	10%
50%	50%
75%	75%
90%	100%

**§ 347-159. Townhouse units.**

The first floor of all townhouse dwelling units and other multistory dwelling units shall comply with N.J.A.C. 5:97-3.14.

**§ 347-160. Provision of affordable housing off-site.**

If a developer is permitted to meet its obligations under this article by providing affordable units off-site, the developer may join with others to provide the units in the same ward as the development or at a reasonably comparable location (to be determined by the Montclair Housing Commission). Off-site affordable units shall be substantially similar in size and quality to on-site affordable units that otherwise would be required under this article.

**§ 347-161. Cash-in-lieu contributions to Affordable Housing Fund. [Amended 6-1-2021 by Ord. No. O-21-09]**

Whenever this article permits a cash-in-lieu contribution, the contribution shall be calculated based on the amount of the subsidy necessary to make one housing unit affordable for municipalities in Montclair's region. The Township Council determines the required subsidy is \$250,000 (as of 2025). The subsidy amount shall be updated annually based on changes in construction costs, as measured by the RS Means Construction Cost Index. The subsidy amount shall be calculated

annually by the Municipal Housing Liaison and posted to the Township website..

**~~§ 347-162. Right of first refusal on initial sale of affordable units.~~**

- ~~A. Each developer shall adhere to the following provisions with respect to the initial offering of affordable units for sale:~~
- ~~B. Township notification. The developer shall notify the Township Department of Planning and Community Development of the prospective availability of any affordable units at the time a building permit is issued for such units.~~
- ~~C. Option. Upon receipt of the aforesaid notification, the Township shall have an exclusive option for 60 days to agree to purchase each affordable unit offered for sale by the developer unless waived or assigned.~~
- ~~D. Waiver. If the Township fails to exercise its option to purchase or fails to negotiate and sign a purchase and sale agreement for the affordable units, or if the Township declares its intent not to exercise its option, the developer shall offer the units for purchase or rent to eligible households consistent with the Township's Affirmative Marketing Plan. If requested by the developer, the Township shall execute documents that may be recorded to evidence its waiver of the purchase option.~~
- ~~E. Time of closing. The closing on affordable units purchased by the Township shall occur on the later of a permanent certificate of occupancy or within 60 days of the Township's exercise of its right of first refusal. If the Township fails to close on the affordable units within the time set forth herein, the developer shall offer the units for purchase or rent to eligible households consistent with the Township's Affirmative Marketing Plan.~~
- ~~F. Transfer of option. The Township may assign its option under this section to any not-for-profit corporation, in which event it shall notify the developer of the name of the assignee, and thereafter the assignee shall deal directly with the developer and shall have all of the rights of the Township as provided under this section.~~

**~~§ 347-163. Purchasers of permanently affordable units.~~**

~~A purchaser of an affordable unit shall occupy the purchased unit as his or her primary residence.~~

**~~§ 347-164. Resale restrictions applicable to affordable units.~~**

~~All ownership affordable units developed under this article shall be subject to the following resale restrictions:~~

- ~~A. Approved purchasers for resale of permanently affordable units. All purchasers of affordable units shall be eligible households. A seller of a permanently affordable unit must select an eligible household purchaser by a method that complies with the marketing and selection process approved by the Department of Planning and Community Development or any other applicable rules, guidelines, or programs.~~
- ~~B. Resale price for affordable units. The resale price of any affordable unit shall be determined in accordance with N.J.A.C. 5:80-26.6 or any other applicable rules, guidelines, or programs.~~

**~~§ 347-165. Continuing requirements.~~**

**TOWNSHIP OF MONTCLAIR  
PENDING ORDINANCE O-26-06**

~~All affordable units shall be subject to the following requirements to ensure the continued affordability of affordable units provided under this article:~~

~~A. Rent increases. Rent increases for affordable units shall be determined in accordance with N.J.A.C. 5:80-26.12 or any other applicable rules, guidelines, or programs.~~

~~B. Continuing purchase options. The Township or its designee shall have an exclusive option to purchase any affordable unit offered for resale in accordance with § 347-162.~~

~~**§ 347-166. Administrative regulations.**~~

~~To the extent the Department of Planning and Community Development deems necessary, rules pertaining to this article will be developed, maintained and enforced in order to implement the goals and objectives of this article.~~

~~**§ 347-167. Monitoring.**~~

~~A. At the conclusion of each calendar year, the Department of Planning and Community Development will present sufficient information to the Township Council so that it can effectively review the operation of this article and determine whether any of the provisions of this article should be amended, modified or deleted. Such information should be sufficient to enable the Township Council to fairly evaluate the following:~~

- ~~(1) The effectiveness of this article in contributing to the goals and objectives sought to be advanced by the article;~~
- ~~(2) Any demographic trends affecting housing affordability which indicate the need for amendments or modifications to this article; and~~
- ~~(3) The level of integration of the provisions of this article with other tools utilized by the Township as part of a comprehensive approach toward attaining the goals of this article.~~

~~**§ 347-168. Developer's fee credit.**~~

~~A developer who complies with its obligations under this article by providing the required number of affordable units on-site or off-site and pays any required cash-in-lieu contribution shall be exempt from payment of the developer's fee provided in Montclair Code §§ 202-41 and 202-42.~~

~~**§ 347-169. Severability.**~~

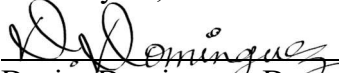
~~If any provision of this article is determined to be invalid by a court of competent jurisdiction, then such provisions shall be severed, and the remaining provisions of this article shall continue to be valid.~~

**[VOTE BOX ON NEXT PAGE]**

**TOWNSHIP OF MONTCLAIR  
PENDING ORDINANCE O-26-06**

<b>RECORD OF COUNCIL VOTE ON INTRODUCTION</b>						
<b>COUNCIL MEMBER</b>	<b>MOVANT</b>	<b>SECOND</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
<b>Deputy Mayor Andersen</b>	✓		✓			
<b>Councilor Birmingham</b>			✓			
<b>Councilor D'Amato</b>			✓			
<b>Councilor Harrison</b>			✓			
<b>Councilor Toler</b>						✓
<b>Councilor Williams</b>			✓			
<b>Mayor Baskerville</b>		✓	✓			

**I HEREBY CERTIFY** the foregoing to be a true copy of Ordinance O-26-06 introduced by the Mayor and Council of the Township of Montclair, in the County of Essex, at its meeting held on February 10, 2026.

  
 \_\_\_\_\_  
 Denise Dominguez, Deputy Township Clerk