

**APPENDIX "B"**

**DRAFT**

**"GROWTH SHARE" ORDINANCE**

**TO AMEND**

**CHAPTER 215**

AN ORDINANCE AMENDING  
CHAPTER 215 ZONING  
OF THE BOROUGH OF MENDHAM CODE  
BOROUGH OF MENDHAM

By adding a new Article XIV To provide for the creation of affordable housing pursuant to NJAC 5:94 Third Round Substantive Rules

BE IT ORDAINED by the Borough Council of Mendham in the County of Morris, and State of New Jersey that the Zoning Ordinance of the Borough of Mendham, known as Chapter 172, is hereby amended as follows:

**SECTION 1** A new Article XVI, entitled "Requirements for Developments That Increase the Borough's Growth Share Obligation for Affordable Housing", is hereby added to Chapter 215 Zoning, to read as follows:

**Article XVI**

**Requirements for Developments That Increase the Borough's Growth Share Obligation for Affordable Housing.**

**§215.52. Requirements for developments that increase the Borough of Mendham's affordable housing obligation pursuant to the Third Round rules of the New Jersey Council on Affordable Housing.**

Every development which increases the number of affordable housing units that must be addressed by the Borough of Mendham's Housing Element and Fair Share Plan is subject to the following:

- A. **Legislative intent.** The legislative intent of this article is to address the Borough's obligations under the Mt. Laurel II decision, the Fair Housing Act, and the Third Round Substantive Rules of the New Jersey Council on Affordable Housing ("COAH")
- B. **Applicability.** The provisions of this section shall apply to the following developments, subject to the exemption in subsection C. below:
  - (1) Any development which results in a net increase in the number of market-rate dwelling units in the Borough of Mendham.
  - (2) Any development which results in a net increase in the gross floor area of any non-residential building in the Borough of Mendham of the following use groups as defined by the International Building Code (IBC) (which has been incorporated into the Uniform Construction Code (UCC):

<b><u>Use Group</u></b>	<b><u>Description</u></b>
B	Office buildings, places where business transactions of all kinds occur. Includes banks, corporate offices, government offices, professional offices, car showrooms and out-patient clinics.
M	Mercantile uses. Buildings used to display and sell products. Includes retail stores, strip malls, shops and gas stations.
F	Factories where people make, process, or assemble products. Includes automobile manufacturers, electric power plant, foundries, and incinerators. F use group includes F1 and F2.
S	Storage uses. Includes warehouses, parking garages, lumber yards, and aircraft hangers. S group includes S1 and S2.
H	High hazard manufacturing, processing, generation and storage uses. H group includes H1, H2, H3, H4 and H5.
A1	Assembly uses including concert halls and TV studios
A2	Assembly uses including casinos, night clubs, restaurants and taverns.
A3	Assembly uses including libraries, lecture halls, arcades, galleries, bowling alleys, funeral parlors, gymnasiums and museums but excluding houses of worship.
A4	Assembly uses including arenas, skating rinks and pools
E	Schools K-12
I	Institutional uses such as hospitals, nursing homes, assisted living facilities and jails. I group includes I1, I2, I3 and I4.
R1	Hotels and motels

**\*Note:** The descriptions in the above table are not intended to be exhaustive, and additional uses are or may be included within the use group; in all cases, the IBC definitions control. The

inclusion of any use in the above table is not to be construed that such use is permitted in the Borough of Mendham or in any particular zoning district; such use shall only be permitted in accordance with the balance of the provisions in Chapter 215, Zoning.

C. Exemptions. Notwithstanding the provisions of Subsection B. above, the following developments shall be exempt from the provisions of this section:

- (1) Market-rate dwelling units within developments that provide affordable housing units in accordance with the Housing Element of the Borough of Mendham and the Borough's Fair Share Plan regulations, in accordance with either the first - or second round rules of COAH and in accordance with the applicable affordable housing requirements of the respective zone districts; provided, however, that such exemption shall only apply to the number of market rate dwelling units in the development that do not exceed a ratio of four (4) market rate units for every one affordable unit in the development.
- (2) Developments of Federal, state, county and municipal governments.
- (3) Developments that receive all required approvals from the Planning Board and/or Board of Adjustment, as applicable, prior to the effective dated of this ordinance, including final subdivision, site plan, conditional use and/or variance approval.

D. Developer's obligation. Prior to or as a condition precedent to the grant of any approval of a development application by the Planning Board, Board of Adjustment, Zoning Officer or Construction Official, as applicable, the developer shall be required to comply with the requirements of this section and to enter into an agreement with the Borough Council, in order to address the effect of the development upon the Borough's affordable housing obligation, in accordance with the following requirements:

- (1) Residential development and residential portion of mixed residential-non-residential development.
  - (a) A net increase (new construction less demolition) of every (8) market rate dwelling units, or fraction thereof, shall increase the obligation of the Borough of Mendham by one (1) affordable housing unit or fraction thereof.
  - (b) For every unit increase, or fraction thereof, in the Borough's affordable housing obligation resulting from the development, the developer shall be required to increase the number of affordable housing units in the Township by an equal number as set forth in Paragraphs (c) and (d) below.
  - (c) For every whole unit of increase in the Borough's obligation resulting

from the residential development or, in the case of mixed residential-nonresidential development, from the residential portion of the development, one (1) affordable unit shall be developed on the site or tract being developed, in accordance with the applicable zoning regulations. Thus, for example, a nine (9) dwelling unit development shall be required to be comprised of no more than eight (8) market rate dwelling units and at least one affordable dwelling unit.

- (d) For every fractional unit of increase in the Township's obligation resulting from the residential development or, in the case of mixed residential-nonresidential development, from the residential portion of the development, the developer shall have the option to: 1) develop an affordable unit on the site or tract being developed or at another location in the Borough of Mendham, in accordance with the applicable zoning regulations, and to claim a credit for any resulting fractional units surplus as set forth in paragraph D.(3) below, and/or 2) pay a fee to the Borough in accordance with subsection F. of this section, below.
  - (e) None of the foregoing shall be construed as increasing the permitted floor area ratio or density above that which the zoning regulations would otherwise permit for the development.
- (2) Non-residential development and non-residential portion of mixed residential-nonresidential development.
- (a) A net increase (new construction less demolition) of every twenty-five (25) estimated jobs, or fraction thereof, shall increase the obligation of the Borough of Mendham by one (1) affordable housing unit or fraction thereof. The number of estimated jobs shall be based on the gross floor area in square feet of new building or additions to existing buildings less the gross floor area of any building to be demolished on the site, and on the use group of the development, in accordance with the following table:

Use Group	Description	Sq. ft. of Gross Floor Area Generating Obligation of 1 Affordable Unit	Jobs per 1000 s.f.
B	Office buildings. Places of business transactions of all kinds occur. Includes banks, corporate offices, government offices, professional offices, car showrooms and out-patient 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 manufactures, electric power plants, foundries, and incinerators. F use group includes F1 and F2	12,500	2
S	Storage uses. Includes warehouses, parking garages, lumber yards, and air craft 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 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
R1	Hotels & motels	31,250	0.8
U	Miscellaneous uses. Fences, tanks, barns, agricultural buildings, sheds, greenhouses, etc.	Exclude	Exclude

- (b) For every unit increase, or fraction thereof, in the Borough's affordable housing obligation resulting from the development, the developer shall be required to increase the number of affordable housing units in the Borough by an equal number as set forth in paragraphs (c) and (d) below.
- (c) For every whole unit of increase in the Borough's affordable housing obligation resulting from the non-residential development or, in the case of mixed residential-nonresidential, from the non-residential portion of the development, the developer shall have the option to: 1) develop an affordable unit on the site or tract being developed, in the case of mixed residential-nonresidential development, 2) develop an affordable unit at another location in the Borough of Mendham, in accordance with the applicable zoning regulations, and/or 3) pay a fee to the Borough in accordance with subsection F. of this section, below.

- (d) For every fractional unit of increase in the Borough's obligation resulting from the non-residential development or, in the case of mixed residential-non-residential development from the non-residential portion of the development, developer shall have the option to: 1) develop an affordable unit as set forth in the Paragraph 2.c. above, and to claim credit for any resulting fractional unit surplus as set forth in Paragraph D.(3) below and/or 2) pay a fee to the Borough in accordance with Subsection F of this section below.
  - (e) None of the foregoing shall be construed as increasing the permitted floor area ratio or density above that which the regulations for the zone district would otherwise permit for the development.
- (3) Surplus units; credits. As a means of addressing a fractional increase in the Borough's affordable housing obligation, or for other reasons, a developer may provide more affordable housing units than required. In addition the Borough Council may negotiate with a developer to provide a subsidy for the provision of more affordable units than required. The following provisions shall apply;
- (a) Any developer that provides more affordable housing units than required, or fraction thereof, which units or fractions of units have not been subsidized by the Borough, shall be credited with such surplus. If the Borough or some other entity subsidized the creation of surplus units, the Borough or such entity shall be credited with such surplus.
  - (b) Credits for surplus units may be applied to a subsequent development by the same developer or may be sold or otherwise transferred to other developers who may then apply such credits to a subsequent development in the Borough of Mendham.
  - (c) The sale or transfer of such credits shall require the approval of both parties to the transaction.
  - (d) The Borough Clerk shall maintain a record of: 1) creation of surplus units and credits for the same, 2) credits available to interested parties for sale or transfer, and 3) prior sales or transfers of credits to the Borough. The Clerk shall make such records available for public inspection upon request.
- E. Requirements for affordable housing units. All affordable housing units shall be subject to the requirements of the zoning ordinance that apply to comparable market rate housing units of the same type in the same zone district. In addition, affordable housing units provided pursuant to this Section shall be subject to the following requirements:
- (1) All affordable units to be created shall be eligible for credit against the Borough's affordable housing obligation and to that end shall comply with all applicable regulations of COAH. No age-restricted affordable units and/or affordable sales

units may be credited in excess of the number of such units permitted to be credited within the Borough by such regulations.

- (2) Affordable housing units, excluding such units to be funded by a payment pursuant to Subsection F. below shall be built in accordance with the following schedule:

Percentage of Market Rate Units Completed	Minimum Percentage of Low & Moderate Income Units
25	0
5 + 1 unit	10
50	50
75	75
90	100

- (3) Affordable units shall utilize the same heating source as market units within the development.

- (4) The developer, in cooperation with the Borough Council, shall:

- (a) Demonstrate capacity to administer the units in accordance with the Uniform Housing Affordability Controls, NJAC 5:80-26.
- (b) Demonstrate that the units will have a low/moderate income split in accordance with the Uniform Housing Affordability Controls, NJAC 5:80-26. For example, in each affordable development, at least fifty (50%) percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units. Where an odd number of affordable units are required to be provided, a majority of the units shall be low-income units.
- (c) Demonstrate that the rents or sale prices of affordable units shall be established in accordance with NJAC 5:94-7 and with the Uniform Housing Affordability Controls, NJAC 5:80-26. For example:

(1) The maximum rent for affordable units within each affordable development shall be affordable to households earning no more than 60% of median income. The average rent for low- moderate income units shall be affordable to households earning no more than 52% of median income. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 10% of all low- moderate income units shall be affordable to households earning no more than 35%

of median income;

(2) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income. Each affordable development must achieve an affordability average of 55% for restricted ownership units. In achieving this affordability average, moderate income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type, insofar as is possible given the number of affordable units in the development.

- (d) Demonstrate that the units will be affirmatively marketed in accordance with NJAC 5:94-7 and with the Uniform Housing Affordability Controls, NJAC 5:80-26.
- (e) Demonstrate that the units will have the appropriate controls on affordability in accordance with NJAC 5:94 and with the Uniform Housing Affordability Controls, NJAC 5:80-26.
- (f) Demonstrate that the units will have the appropriate bedroom distribution in accordance with the Uniform Housing Affordability Controls, NJAC 5:80-26.

[1] Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

- [a] Combined number of efficiency and one-bedroom units is no greater than 20% of the total low- and moderate-income units;
- [b] At least 30% of all low- and moderate-income units are two bedroom units;
- [c] At least 20% of all low and moderate-income units are three bedroom units; and
- [d] The remainder, if any, may be allocated at the discretion of the developer.
- [e] Where there are an insufficient number of affordable units provided to meet the above bedroom distribution, the first unit shall be a two-bedroom unit, the second unit shall be a three-bedroom unit and the third unit shall be a one-

bedroom unit.

[2] Age-restricted low- and moderate-income units may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the affordable development. The standard may be met by creating all one-bedroom units or by creating a two-bedroom unit for each efficiency unit.

(g) Comply with all other applicable requirements of the Substantive Rules of the New Jersey Council on Affordable Housing, NJAC 5:94 and the Uniform Housing Affordability Controls, NJAC 5:80-26.

F. Payments in lieu of developing affordable housing. Only when permitted by paragraphs D(1) and D(2) above, a developer may make payment to the Borough in lieu of developing affordable housing units. The following provisions shall apply to such payments:

(1) The amount of payments in lieu of constructing affordable units shall be negotiated between the Borough Council and the developer. The amount of the payment shall be based upon the cost of the Borough to create, or subsidize creation of the same number, or fraction thereof, of affordable housing units within the Borough as the increased obligation resulting from the development, using any of the methods permitted by the New Jersey Council on Affordable Housing (COAH) as set forth in Paragraph F.(2) below. Both hard and soft costs shall be included in the calculation. The Borough Council may require the preparation of a pro forma to confirm that the payment is accurate and based upon realistic costs within the Borough to create such affordable units, and the Borough Council may submit such pro forma for review by a third party retained by the Borough Council.

(2) Payments in lieu of constructing affordable units on site shall only be used to fund eligible affordable housing activities within the Borough of Mendham limited to the following as described and regulated by COAH Substantive Rules at NJAC 5:94-4.5, 4.6 and 4.8 through 4.15 provided that such activities are eligible for credit against the Borough's affordable housing obligation, comply with all applicable requirements of COAH's Substantive Rules, and comply with the zoning regulations of the Borough of Mendham.

(a) New construction with an affordable housing component.

(b) Municipally-sponsored and 100% affordable programs

- (c) Alternative living arrangements
  - (d) Up to ten (10) accessory apartments within the Borough
  - (e) Buy-down program
  - (f) Municipally-sponsored rental program
  - (g) ECHO (Elder Cottage Housing Opportunities) units
  - (h) Assisted living residences
  - (i) Affordable housing programs.
  - (j) Expanded crediting opportunities
3. Payments in lieu of constructing affordable units shall be deposited in a separate interest-bearing housing trust fund or deposited in a housing trust fund established pursuant to NJAC 5:94-6.11(a) and shall at all times be identifiable from development fees. No funds shall be spent by the Borough until and unless COAH has approved a spending plan for such funds. The Borough Clerk shall maintain a record of the amount deposited in the account, plus interest, and shall make such record available for public inspection upon request.
4. In the event that a developer makes such payment but then does not proceed to develop the project that resulted in the affordable housing obligation, the developer may request a refund of payment. Such requests shall be made in writing to the Borough Council. If requested, the Borough shall refund such fee, plus any interest in the account resulting from the payment less any administrative expenses require to administer the account. Any refund issued by the Borough shall be construed as a failure of the applicant to satisfy a condition precedent to the development approval and shall, therefore, terminate any and all rights to such development. The developer may reinstate such rights by making a new payment, with the amount of such payment to be renegotiated as set forth in Paragraph F.1. above. The foregoing shall not be construed to extend or otherwise alter any rights to proceed with the development as established by the New Jersey Municipal Land Use Law, the rules of the Council on Affordable Housing or other applicable law.

**Section 3.** All ordinances or parts of ordinances in conflict or inconsistent with any part of this ordinance are hereby repealed to the extent that they are in such conflict or inconsistent.

**Section 4.** This ordinance shall take effect after passage and publication as soon as and in

the manner provided by law.

**Section 5.** In the event that any section, part of provision of this ordinance shall be held to be unenforceable or invalid by any Court, such holdings shall not effect the velleity of this ordinance as a whole, or any part thereof, other than the part so held unenforceable or invalid.

ATTEST:

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Maureen Massey, Borough Clerk

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Borough Council Mendham Borough  
Richard Kraft, Mayor