

ORDINANCE O-25-41

AN ORDINANCE AMENDING ARTICLE X OF THE TOWNSHIP CODE ENTITLED "ZONES" CREATING A SECTION 188-84.6 ENTITLED "MODERATE- AND LOW-INCOME HOUSING MIXED USE OVERLAY ZONE 16" KNOWN AS ML-16 ZONE

WHEREAS, the Township of Howell, County of Monmouth, State of New Jersey, (hereinafter, "Township" or "Howell") has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations and in fact obtained a Final Round Three Judgment of Compliance and Repose on from the Court in the matter captioned In the Matter of the Application of the Township of Howell, County of Monmouth, Superior Court of New Jersey, Law Division, Docket No. MON-L-2525-16 thereby immunizing the Township from builder's remedy litigation until July 1, 2025 (the "Third Round Litigation"); and

WHEREAS, all Third Round Litigation projects are currently under various stages of development from pre-construction to completion and occupancy;

WHEREAS, on March 20, 2024, the Governor signed into law P.L. 2024, c.2, an Amendment to the 1985 Fair Housing Act (hereinafter "Amended FHA" or the "Act"); and

WHEREAS, the Amended FHA required the Department of Community Affairs ("DCA") to provide an estimate of the Present Need, also referred to as the rehabilitation obligation, and the Round 4 Prospective Need (new construction) affordable housing obligation of all municipalities by October 20, 2024 for the Fourth Round period, July 1, 2025 through July 1, 2035.

WHEREAS, the DCA issued a report on October 18, 2024 ("DCA Report") estimating the Present Need and the Round 4 Prospective Need obligation for all municipalities based upon its interpretation of the standards in the Act, including Howell Township and the DCA Report calculated Howell's Round 4 (2025-2035) Present Need (Rehabilitation) Obligation as 63 units and its Round 4 Prospective Need Obligation as 338 affordable housing units; and

WHEREAS, the Amended FHA provides that, irrespective of the DCA's calculations, municipalities have the ability to either accept, or provide alternate calculations for, the DCA's "present and prospective fair share obligation(s)...by binding resolution no later than January 31, 2025", a deadline which was later extended to February 3, 2025 by the Administrative Office of the Courts ("AOC") via a directive issued on December 19, 2024; and

WHEREAS, the Township Council adopted Resolution 25-69 on January 21, 2025 rejecting the DCA's calculation of its prospective need obligation calculation of 338 affordable housing units premised upon the Township Planner's analysis that the areas the DCA identified as developable are over inclusive thereby reducing the Land Capacity Allocation Factor from 2.45 % to 1.99 % resulting in the reduction of the prospective need (New Construction) obligation from 338 to 276 affordable housing units; and

WHEREAS, the Acting Administrative Director issued Directive #14-24, dated December 13, 2024, requiring a municipality seeking a certification of compliance with the Act to file an action in the form of a declaratory judgment complaint within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner; and

WHEREAS, the Township filed a Declaratory Judgment Complaint on January 23, 2025 seeking Program and Court approval of its prospective need obligation at 276 affordable housing units and the Township is required by the Act to adopt a Housing Element and Fair Share Plan setting forth its strategy to meet its affordable housing obligation by June 30, 2025;

WHEREAS, the Township approved a Mediation Agreement before the Affordable Housing Dispute Resolution Program, establishing the Township's Fourth Round fair share obligation as follows: Present Need-63 units and Prospective Need-304 units which was subsequently confirmed through a Court Order entered by the Hon Linda Grasso, Jones, J.S.C. dated April 14, 2025, accepting and adopting the Program Member's Report and Recommendation for approval establishing the Township's Fourth Round obligation as set forth herein;

WHEREAS, the Court Order authorized the Township to proceed to the compliance phase with the preparation and adoption of its proposed Housing Element and Fair Share Plan for the Fourth Round by no later than June 30, 2025; and

WHEREAS, the Township Planning Board approved its Housing Element and Fair Share Plan for the Fourth Round by Resolution dated June 19, 2025 setting forth the Township's affordable housing plan to address and meet its Fourth Round Present and Prospective Need obligation; and the Township Council adopted a Resolution Endorsing the Housing Element and Fair Share Plan on June 24, 2025;

WHEREAS, the Township received a proposal from Route 9 Howell LLC, 120 Arbutus Drive, Lakewood, NJ 08701 (the "Developer") to construct a mixed use inclusionary project comprised of 36 apartments, 116 townhomes, 7,000 square foot office and 15,000 square foot retail with a twenty percent set aside resulting in 30 affordable housing units (the "Project") on the property identified as Block 71, Lots 20 and 21 on the tax map of the Township of Howell located on US Highway 9 in the Township (the "Property"); and

WHEREAS, the Township is requiring the Developer to enter into a Developer's Agreement with the Township to ensure the Developer will construct the Project in conformance with the concept plan and this ordinance and this ordinance shall not become effective unless and until the Township enter into a Developer's Agreement with the Township so that the Township may rely upon the Project to meet a portion of its Fourth-Round affordable housing obligation; and

WHEREAS, the Township Council believes it is in the best interest of the Township's residents to continue to meet its constitutional obligation to provide for its fair share of affordable housing in the least impactful way as possible to its current residents and in order to remain immune from builder's remedy litigation through the adoption of an ordinance rezoning the Property to allow for the Project to be developed in accordance with the Concept Plan and the zoning standards set forth in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Township Council of the Township of Howell, County of Monmouth, and State of New Jersey that Chapter 188 "Land Use", Article X of the Township Code entitled "Zones" is hereby amended to create a Section 188-84.6 entitled "Moderate and Low- Income Housing Mixed Use Overlay Zone 16 (ML-16)" as follows:

188-84.6. Moderate- and Low- Income Housing Mixed Use Overlay Zone 16 (ML-16)

A. Purpose:

- (1) In accordance with its continuing constitutional obligation to meet its Fourth-Round affordable housing obligation, the Township is obligated to create a realistic opportunity to provide for its fair share of affordable housing in accordance with applicable affordable housing statute and regulations.
- (2) The Moderate—and Low-Income Housing Mixed Use Overlay Zone 16 (ML-16) District is intended to assist the Township in complying with its Fourth-Round affordable housing obligation. The following property is included in the ML-16 Zoning District: Block 71, Lots 20 and 21.
- (3) The zoning standards authorized by this Ordinance shall constitute an overlay zone and the underlying zoning for the Property shall remain in effect.

B. Definitions:

- (1) Stacked Townhouse dwelling: a structure containing two or more connected dwelling units stacked one dwelling unit above the other, which can include shared floors divided by walls and shared common party walls, with private entrances to each unit. A building may contain both stacked townhouse dwellings and townhouse dwellings.

C. ML-16 Zoning Standards

- (1) The Property is a twenty-acre (20.23 AC) tract designated as Block 71, Lots 20 and 21, as per the Howell Township Tax Map. The Zoning Map of the Township of Howell, as amended, is hereby further amended to provide that Site 1 (Block 71, Lots 20 and 21 of the Howell Township Tax Map) is supplementally designated as the Moderate- and Low- Income Housing Mixed Use Overlay Zone 16 (ML-16).
- (2) The requirements of the ML-16 Mixed Use Overlay Zone including bulk requirements, are hereby specifically set forth as follows. The following overlay zone shall provide an alternative development opportunity to allow for flexibility from the underlying zoning requirements. The modifications are as follows:
 - (a) Permitted uses – Multiple principally permitted uses and permitted buildings shall be permitted on the same lot.
 - [1] Permitted principal uses – A single building may contain one or more of the following:

- [a] Stacked Townhouse dwellings
 - [b] Townhouse dwellings- as defined in Howell Township Ordinance Section 188-4
 - [c] Apartments
 - [d] Office
 - [e] Retail
 - [f] Community Center
 - [g] House of Worship and/or a Mikvah within the Community Center Building
 - [h] EIRUV
 - [i] Other uses permitted in the HD-1 zone
- (b) Permitted accessory uses
- [1] Off-street parking, subject to the Residential Site Improvement Standards (RSIS) New Jersey Administrative Codes, Title 5, Chapter 21 for the residential units and 4 parking spaces per 1,000 square feet for the office and retail or the appropriate requirement per Chapter 188-107.
 - [2] Active and passive recreational, and other such facilities for the exclusive use or service of the development and their guests, including but not limited to: fitness centers, playgrounds, landscaped trails, parks, clubhouses, maintenance buildings, picnic grounds, dog parks.
 - [3] Utilities and utility structures including but not limited to; pump stations, pump house, water tank, treatment facilities, stormwater basins, transformers, meters, etc. necessary for the proper distribution and monitoring of these services.
 - [4] All other utilities appurtenant to subject development.
 - [5] Any other uses that are customarily incidental and subordinate to a principal use and/or principal building.
- (c) Permitted accessory structures
- [1] Garage
 - [2] Sheds
 - [3] Gazebo
 - [4] Trellis
 - [5] Decks
 - [6] Patios
 - [7] Fences and walls
 - [8] Signs
 - [9] Dog-parks
 - [10] HVAC Condensor
 - [11] Mailboxes
- (d) Residential dwelling requirements
- [1] Maximum number of Total Units: Up to 175 housing units, with or without basements, inclusive of affordable units

- [2] Affordable housing units set aside shall be 20% of the total number of approved units, with all units for low- and moderate-income housing in accordance with the Uniform Housing Affordability Controls (UHAC)
- [3] Maximum number of units per building: 20
- (e) Maximum Building Length: 240 feet
- (f) Area, Yard, Bulk and Site Design Requirements
 - [1] Minimum building setback from external right-of-way: 50 feet; the setback can be reduced to 35 feet in the event a road dedication is required by the Township of NJDOT
 - [2] Minimum building setback from off-street parking areas: 10 feet
 - [3] Minimum building setback from all internal streets (measured from face of curb) not including parking areas: 20 feet
 - [4] Zero (0) setback lot line for units in the same building
 - [5] Minimum distance between buildings:
 - [a] Front to front: 60 feet
 - [b] Side to side: 20 feet (excluding porches and common utility rooms, common meter banks, which may encroach up to 5 feet, and eaves, chimneys/fireplaces, bay windows and other ornamental architectural features which may encroach up to 3 feet into the required separation)
 - [c] Side to front / rear: 20 feet
 - [d] Rear to rear: 20 feet
 - [e] At grade patios, decks, elevated decks, sheds and balconies shall be allowed in rear and/or side yard setbacks with approval of HOA.
 - [f] Driveways can be allowed within side yard setback, however no closer than three (3) for end units and zero (0) setback for interior units
 - [g] The following structures shall be permitted in the front yard area:
 1. Hot boxes for domestic water service
 2. Sewer Pumping Station
 3. Trash Receptacles with enclosure
 4. Mailbox clusters/kiosks
 5. Separate mail structure building
 6. Stormwater management facilities and associated retaining walls
 7. Eruvs
 8. Directional signage and site signage at ingress/egress points to development along

Route 9 with a 20' front yard setback per Chapter 256.

- [6] Minimum Lot Width 20 feet
- [7] Minimum Lot Depth 65 feet
- [8] Maximum building coverage (overall tract): 35%
- [9] Maximum impervious coverage (overall tract): 70% including patios and decks in accordance with Chapter 188-15C(a).
- [10] Maximum building height: 45 feet measured per Chapter 188-4.

(g) Miscellaneous Standards

[1] Porous pavement shall be permitted pursuant to standards in NJAC 7:8 – if excluded from drainage calculations, HOA must be in charge of continued maintenance.

[2] Driveways shall be a minimum of eleven (11) feet in width

(h) Parking requirements shall be governed by the New Jersey Residential Site Improvement Standards at N.J.A.C. 5:21.

[1] Parking is permitted along circulation drives

(i) Additional requirements and exceptions from other requirements

[1] Buffers and screening shall exempt from regulations 188-63

[2] A fifty (50) foot perimeter four (4) season buffer shall be provided to the adjacent farm and thirty (30) foot perimeter four (4) season buffer shall be provided to the adjacent commercial property with no buffer to Route 9 and Estelle Lane.

[3] All fences and walls proposed shall be exempt from the standards found within §188-12A, regarding 50% open space for light and air requirement for fences and retaining walls within the front yard setback

[4] All stormwater management structures, utility structures, ground level patios along northern property line, as well as parking of vehicles shall be exempt from the standards found within §188-63D regarding buffers and screening.

[5] Waiver of cost generation measures

[a] Preparation and submission of a Woodland Management Plan Section 188-187 through 202

[b] Waiver of cost generative measures pursuant to NJAC 5:93-10.1 et seq. in order to permit the intended, agreed upon development of the property the Township agrees to abide by the COAH regulations against cost measures.

[c] Any inclusionary development within the ML-16 Zone shall be subject to the provisions NJAC 5:93-10.2, which set forth limitations on applications requirements and provide a standards of review for the

Planning Board for necessary variances or deviations necessary to accomplish the intent of the district.

- [6] Exemption from Street Tree Ordinance Section 188-122. Street trees will be provided where appropriate but shall be exempt from the requirement of a tree every twenty (20) feet along the roadway or as approved by the Board's professionals.
- [7] Exemption from Section 188-221C(7), basins shall be no closer than 20 feet of building.
- [8] Retaining walls shall be exempt from the provisions set forth in 134-7B(2), (9) and 134-7C(3). As such the project will be graded to allow infiltration and to both capture some of the stormwater and to allow some of the stormwater runoff to drain over the wall to existing grades. Scour countermeasures shall be provided at the toe of the wall, such as crushed stone or small diameter rip rap to mitigate the formation of any scour holes. The maximum height for a retaining wall in the ML-16 Zone shall be six feet. In the event of stepped retaining walls, there shall be a minimum of four feet between each such retaining wall. A retaining wall shall not be subject to the requirements of the Township Code 188-12 but shall be subject to the provisions of the section of the Township Code 134-7 and the applicable provisions of the New Jersey State Uniform Construction Code, NJAC 5:23-1.1 et seq., including NJAC 5:23-2.14(g) except that the Township Code 134-7C(1) shall not be applicable, and retaining walls shall be permitted at or up to the property line of a lot
- [9] Steep slopes shall be defined as slopes greater than 20% over a minimum run of ten (10) feet
- [10] The provisions of Section 188-212 et seq. (Stormwater Control) shall be applicable within the ML-16 Zone. However, in the event that the provisions of Section 188-212 conflict with or impose requirements other than those set forth within the provisions of the Residential Site Improvement Standards, NJAC 5:21 (RSIS), the RSIS shall control.
- [11] Exempt from Section 188-16 with respect to setbacks. The Pump Station shall be adequately buffered and fenced, but no berm shall be required.
- [12] With respect to Section 188-23 topsoil shall be stockpiled and repurposed throughout the site to the maximum extent possible.
- [13] Exempt from Section 188-22 Lighting- Project must comply with IES Standards

D. Technical subdivisions.

- (1) *It is acknowledged that a commercial project to be developed pursuant to*

this chapter may be of such a size or type so as to make sectionalization by subdivision and the use of different forms of ownership a practical necessity. Therefore a technical subdivision for such a project may be required for marketing or financing purposes.

- (2) *An application for technical subdivision approval may be submitted with an application for approval of a nonresidential site plan, or subsequent to the issuance of such an approval.*
- (3) *Such an application shall be considered as a technical subdivision and treated as a minor subdivision application without the necessity to obtain bulk variances that would technically be required, subject to the following conditions:*
 - (a) *The purpose of the application is to create a new lot for the purpose of financing or transfer of ownership within a development which is, or has been, the subject of site plan approval.*
 - (b) *A technical subdivision may not substantially modify or otherwise adversely impact on the integrity of a previously approved development plan.*
 - (c) *A technical subdivision must not reduce, limit or modify parking or access to parking.*
 - (d) *If a technical subdivision includes the division of parking or other common areas or facilities, the subdivision shall be conditioned upon appropriate easements for parking, access, drainage and/or utilities where necessary.”*

SECTION 2. REPEALER

The remainder of all other sections and subsections of the aforementioned ordinances not specifically amended by this Ordinance shall remain in full force and effect.

SECTION 3. INCONSISTENT ORDINANCES

All other Ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed as to such inconsistency, but only to the extent of such inconsistency.

SECTION 4. SEVERABILITY

If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect upon its passage and publication according to law, subject to, and contingent upon, the approval and execution of a Developer's Agreement between the Township and the Developer, its successor and/or assigns.

NOTICE

The Ordinance published herewith was introduced and passed on first reading by the Township Council of the Township of Howell on **September 16, 2025** and will be further considered for final passage and adoption at the Township Municipal Building on 4567 Route 9 North, Howell, New Jersey on **October 7, 2025 at 7:00 p.m.** or as soon thereafter as the matter can be reached on the Agenda, at which time and place all persons interested therein shall be given an opportunity to be heard and during the week prior thereto, and up to, and including, the date of such meeting, copies of said Ordinance will be available at the Clerk's Office in the Township of Howell Municipal Building to the members of the general public who shall request same.

Introduction:

COUNCIL	MOTION	2ND	AYES	NAYS	ABSTAIN	ABSENT
<i>Councilman Nadel</i>	X		X			
<i>Councilwoman O'Donnell</i>			X			
<i>Councilman Wrubel</i>		X	X			
<i>Deputy Mayor Fischer</i>			X			
<i>Mayor Leggio</i>			X			

I, Diane Festino, Municipal Clerk of the Township of Howell, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Mayor and Township Council, at its Meeting held September 16, 2025. WITNESS my hand this 17th day of September 2025.



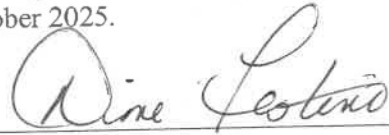
DIANE FESTINO, RMC
Municipal Clerk
Township of Howell

This is to certify that the foregoing Ordinance was adopted by the Township Council at a regular meeting of the Township of Howell held on October 7, 2025.

Adoption:

COUNCIL	MOTION	2ND	AYES	NAYS	ABSTAIN	ABSENT
<i>Councilman Nadel</i>		X	X			
<i>Councilwoman O'Donnell</i>	X		X			
<i>Councilman Wrubel</i>			X			
<i>Deputy Mayor Fischer</i>			X			
<i>Mayor Leggio</i>						X

I, Diane Festino, Municipal Clerk of the Township of Howell, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Mayor and Township Council, at its Meeting held October 7, 2025. WITNESS my hand this 8th day of October 2025.



DIANE FESTINO, RMC
Municipal Clerk
Township of Howell

Explanatory Statement: This ordinance creates the Moderate- and Low-Income Housing Mixed Use Overlay Zone 16 (ML-16) to include a townhome and stacked townhome development totaling up to 175 units on Block 71, Lots 20 and 21. The proposed development also includes 58 number of affordable units to meet the Township's obligation towards its State mandated affordable housing units.