

**ORDINANCE NO. 09-18            AN ORDINANCE AMENDING CHAPTER 207, ZONING,  
OF THE CODE OF THE BOROUGH OF KINNELON, BY  
THE ADDITION OF ARTICLE XIX ENTITLED  
"MANDATORY AFFORDABLE HOUSING SET-ASIDE"**

**WHEREAS**, on March 10, 2015, the New Jersey Supreme Court issued its decision in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015). In that decision, the New Jersey Supreme Court transferred primary jurisdiction over affordable housing matters from the New Jersey Council on Affordable Housing ("COAH") to the New Jersey Superior Court and established a transitional process for municipalities, like the Borough of Kinnelon ("Borough"), to file declaratory judgment actions seeking to declare their Housing Element and Fair Share Plans ("HEFSPs") as being constitutionally compliant and seeking similar protections to what they would have received if they had continued to proceed before COAH; and

**WHEREAS**, on June 25, 2015, the Borough filed a declaratory judgment action with the New Jersey Superior Court seeking to declare its HEFSP as being constitutionally compliant and seeking protection and repose against exclusionary zoning litigation for a ten (10) year period; and

**WHEREAS**, the Borough negotiated and executed a Settlement Agreement with the Fair Share Housing Center ("FSHC") which included agreement on the extent of the Borough's affordable housing fair share obligation for the period from 1999 to 2025 and the methods the Borough intends to use to satisfy the obligation; and

**WHEREAS**, the New Jersey Superior Court entered a Judgment of Compliance and Repose on March 9, 2018 that granted the Borough immunity and repose from any and all Mount Laurel lawsuits through July 1, 2025, subject to the satisfaction of certain Compliance Conditions and Requirements including the adoption of a mandatory set-aside ordinance that requires that all new multi-family residential development of 5 or more units that becomes permissible through a use variance, density variance, rezoning or redevelopment plan provide a 20 percent affordable housing set-aside; and

**WHEREAS**, the Borough of Kinnelon desires to amend and supplement Chapter 207, Zoning, of the Code of the Borough of Kinnelon by the addition of Article XIX entitled "Mandatory Affordable Housing Set-Aside".

**NOW, THEREFORE, BE IT ORDAINED**, by the Governing Body of the Borough of Kinnelon, County of Morris, State of New Jersey as follows:

**SECTION ONE.** Chapter 207, Zoning, of the Code of the Borough of Kinnelon is hereby amended and supplemented with by the addition of the following:

**Article XIX: Mandatory Affordable Housing Set-Aside**

**Section 207-112. Purpose**

- A. Except as otherwise regulated in this chapter, any development application proposing five (5) or more new dwelling units shall be required to set aside twenty percent (20%) of said lots or units for affordable housing.
- B. This requirement shall apply for all new multi-family residential development of five (5) or more units that become permissible through either a use variance, a density variance increasing the permissible density at the site, a rezoning permitting multi-family residential housing where not previously permitted, or new redevelopment plan, and subject to any and all applicable regulations set forth by the Highlands Council.
- C. This requirement does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of the Borough of Kinnelon to grant such rezoning, variance or other relief. A property shall

not be permitted to be subdivided so as to avoid compliance with this requirement.

**SECTION TWO.** All Ordinances of the Borough of Kinnelon which are inconsistent with the provisions of this Ordinance are hereby repealed as to the extent of such inconsistency.

**SECTION THREE.** Any section, subsection, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any Court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

**SECTION FOUR.** This Ordinance shall take effect as provided by law.

ATTEST:

BOROUGH OF KINNELON

  
Karen M. Iuele, RMC, Borough Clerk

  
Robert W. Collins, Mayor

**CERTIFICATION**

I, Karen M. Iuele, Borough Clerk of the Borough of Kinnelon, County of Morris, State of New Jersey, do hereby certify the foregoing to be a true copy of an Ordinance introduced, read by title and passed on the first reading at the regular meeting of the Borough held on June 24, 2018 and adopted by the Governing Body at a regular meeting of the Borough held on July 19, 2018.

  
Karen M. Iuele, RMC, Borough Clerk