

Ordinance of the City of Jersey City, N.J.

File No. Ord. 21-077
Agenda No. 3.2 (1st Reading)
Agenda No. (2nd Reading and Final Passage)



AN ORDINANCE AMENDING AND REPLACING CHAPTER 187 (INCLUSIONARY ZONING) OF THE MUNICIPAL CODE REQUIRING ALL APPLICABLE DEVELOPMENTS TO INCLUDE A MANDATORY ONSITE AFFORDABLE HOUSING SET-ASIDE.

COUNCIL AS A WHOLE offered and moved adoption of the following ordinance:

WHEREAS, the City of Jersey City and its elected officials are committed to ensuring that new residential development within the City is equitable and inclusionary; and

WHEREAS, the City of Jersey City and its elected officials are proud of the City’s ethnic, racial, and socio-economic diversity and recognize that policies that create homes affordable to the City’s working families are essential to protecting that diversity; and

WHEREAS, the New Jersey Supreme Court has held that the provision of “safe, decent and attractive housing that lower-income households can afford serves the community’s interest in achieving an integrated, just and free society and promotes the general welfare of all citizens.” De Simone v. Greater Englewood Hous. Corp., 56 N.J. 428, 441 (1970); and

WHEREAS, the Supreme Court has held that the State’s Constitution makes it “plain beyond dispute that proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare required in all local land use regulation.” S. Burlington Cty. NAACP v. Mount Laurel, 67 N.J. 151, 179 (1975) (Mount Laurel I); and

WHEREAS, the Supreme Court has specifically identified inclusionary zoning/mandatory set-aside ordinances as mechanisms that municipalities may utilize to create affordable homes. Holmdel Builders Ass’n v. Twp. of Holmdel, 121 N.J. 550, 563 (1990) (“The principal mode of compliance suggested in Mt. Laurel II was mandatory set-asides.”); and

WHEREAS, the New Jersey Legislature, when it enacted the Fair Housing Act of 1985, established that it is in the State’s interest “to maximize the number of low and moderate units by creating new affordable housing and by rehabilitating existing, but substandard, housing in the State.” N.J.S.A. 52:27D-302; and

WHEREAS, the Municipal Land Use Law (“MLUL”) sets forth that one of its primary purposes is to encourage municipal action to guide the appropriate use or development of all lands in this State in a manner which will promote the public health, safety, morals, and general welfare. N.J.S.A. 40:55D-2(a); and

WHEREAS, the MLUL further sets forth that one of its primary purposes is to promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment. N.J.S.A. 40:55D-2(e); and

WHEREAS, municipalities that adopt new or amend existing redevelopment/rehabilitation plans under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., may require an affordable housing set-aside; and

APPROVED AS TO LEGAL FORM

An Ordinance amending and replacing Chapter 187 (Inclusionary Zoning) of the Municipal code requiring all applicable developments to include a mandatory onsite affordable housing set-aside.

WHEREAS, the City of Jersey City, in March 2019, adopted an updated Housing Element, per N.J.S.A. 52:27D-311, which recognized “renting is becoming less affordable” in the City, with 45% of renters paying more than 30% of their incomes on housing costs in 2016 – a 13% increase from 2010; and

WHEREAS, the City of Jersey City, in March 2019, adopted a Master Plan Reexamination Report that stated that “[a] diversification of households with different incomes within the same areas is imperative for the City to develop holistically” and “[a]n inclusionary zoning ordinance will address concentrated wealth along with concentrated poverty as it will require all developments to be inclusive of mixed income communities”; and

WHEREAS, in October 2020, the Municipal Council of the City of Jersey City adopted Ordinance No. 20-089, which created Chapter 187, and portions of said ordinance having been invalidated by the Superior Court of New Jersey on specific bases via an order entered on August 12, 2021, in the matter of Fair Share Housing Center v. The City of Jersey City, Docket No. HUD-L-4499-20; and

WHEREAS, the City of Jersey City and its elected officials now wish to amend and replace Chapter 187 in its entirety to address the bases on which the October 2020 ordinance was struck down; and

WHEREAS, a mandatory affordable housing set-aside requirement accompanied by increases in permitted residential density or floor area as a result from variances pursuant to N.J.S.A. 40:55D-70(c) and (d) or as a result of rezoning constitute incentives to private developers and compensatory benefits for developments as required by the Fair Housing Act, N.J.S.A. 52:27D-311.h.; and

WHEREAS, a mandatory affordable housing set-aside requirement resulting from amended redevelopment plans prepared and adopted under the Local Housing and Redevelopment Plan, N.J.S.A. 40A:12A-1 et seq., that increase residential density or FAR or permit residential uses in zoning districts restricted against such uses constitute a compensatory benefit for developments; and

WHEREAS, pursuant to N.J.S.A. 40:55D-62, the Municipal Council may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon; and

WHEREAS, pursuant to N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64, the Municipal Council hereby refers this inclusionary zoning ordinance to the Planning Board in order to seek the Board’s report and recommendations relative to this ordinance, including consistency review with the City’s Master Plan.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that Chapter 187 (Inclusionary Zoning) of the Municipal Code shall be amended and replaced in its entirety to read as attached hereto

BE IT FURTHER ORDAINED THAT:

- A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- B. This ordinance shall be a part of the Jersey City Code as though codified and set forth fully herein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- C. The City Clerk and the Corporation Council be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible repealers of existing provisions.
- D. The City Planning Division is hereby directed to give notice at least ten days prior to the hearing on the adoption of this Ordinance to the Hudson County Planning Board and to all other persons entitled thereto pursuant to N.J.S. 40:55D-15 and N.J.S. 40:55D-63 (if required).
- E. Upon the adoption of this Ordinance after public hearing thereon, the City Clerk is directed to publish notice of the passage thereof and to file a copy of the Ordinance as finally adopted with the Hudson County Planning Board as required by N.J.S. 40:55D-16. The clerk shall also forthwith transmit a copy of this Ordinance after final passage to the Municipal Tax Assessor as required by N.J.S. 40:49-2.1.

An Ordinance amending and replacing Chapter 187 (Inclusionary Zoning) of the Municipal code requiring all applicable developments to include a mandatory onsite affordable housing set-aside.

RECORD OF COUNCIL VOTE ON INTRODUCTION –						
RIDLEY		SALEH		LAVARRO		
PRINZ-AREY		SOLOMON		RIVERA		
BOGGIANO		ROBINSON		WATTERMAN, PRES		

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING –						
RIDLEY		SALEH		LAVARRO		
PRINZ-AREY		SOLOMON		RIVERA		
BOGGIANO		ROBINSON		WATTERMAN, PRES.		

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY –						
RIDLEY		SALEH		LAVARRO		
PRINZ-AREY		SOLOMON		RIVERA		
BOGGIANO		ROBINSON		WATTERMAN, PRES.		

RECORD OF FINAL COUNCIL VOTE –						
RIDLEY		SALEH		LAVARRO		
PRINZ-AREY		SOLOMON		RIVERA		
BOGGIANO		ROBINSON		WATTERMAN, PRES.		

Adopted on first reading of the Council of Jersey City, N.J. on
Adopted on second and final reading after hearing on

This is to certify that the foregoing Ordinance was adopted
by the Municipal Council at its meeting on

City Clerk

Joyce E. Watterman, President of Council
Approved:

Steven M. Fulop, Mayor
Date to Mayor:
Approved:

An Ordinance amending and replacing Chapter 187 (Inclusionary Zoning) of the Municipal code requiring all applicable developments to include a mandatory onsite affordable housing set-aside.

FACT SHEET -

This summary sheet is to be attached to the front of any ordinance that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the ordinance.

Project Manager

Tanya Marione, Director of Planning	201-547-5010	tanyam@jcnj.org
Division	Division of City Planning	

Note: Project Manager must be available by phone during agenda meeting (Wednesday prior to council meeting @ 1:00 p.m.)

Purpose

Replacing the Inclusionary Zoning that was previously invalidated by the Superior Court

Cost (Identify all sources and amounts)	Contract term (include all)
0	

ATTACHMENTS:




IZO_2TIER MAP AMI 2021 Chapter 187 Final Draft 11.24

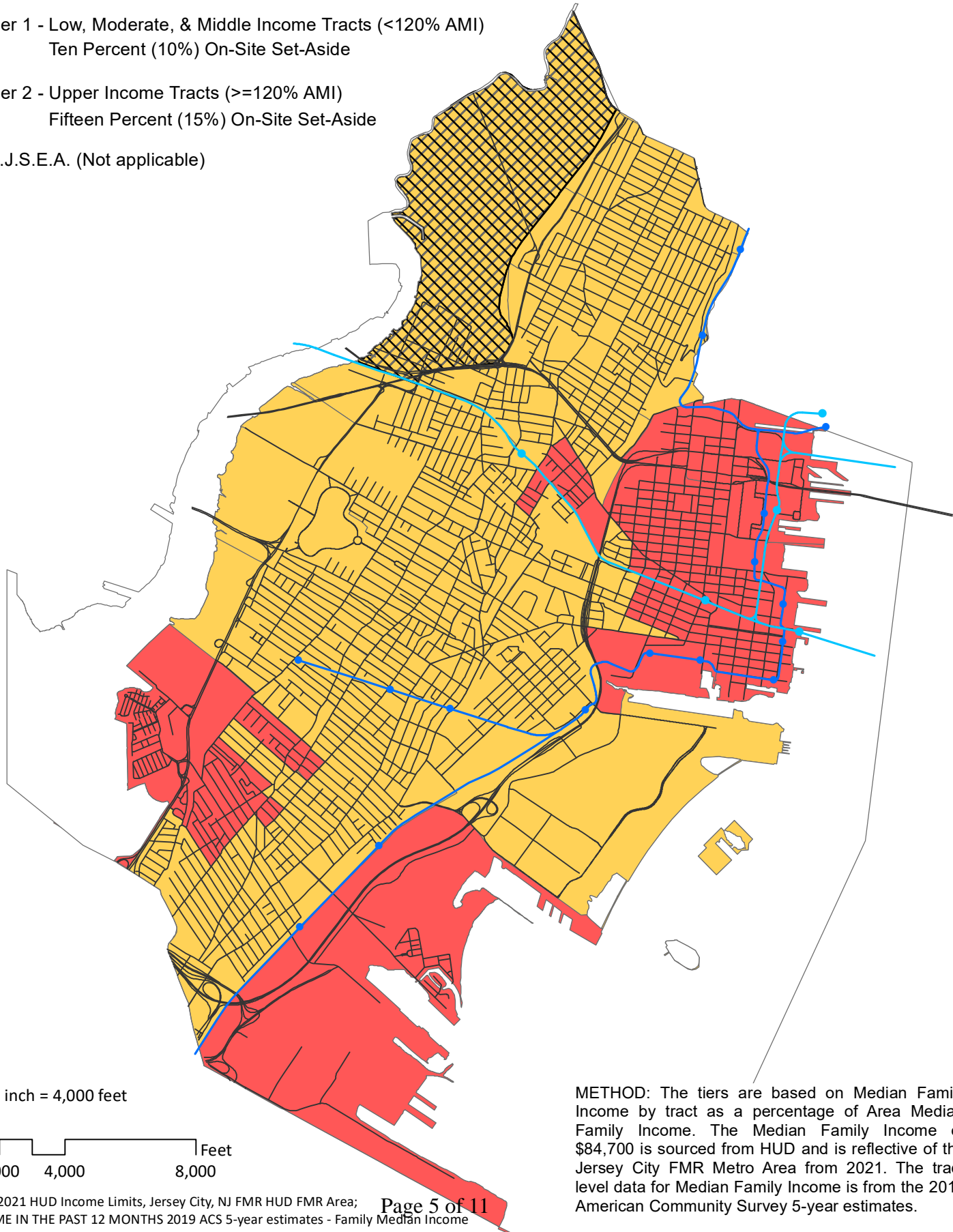
Approved by	Status:
Tanya Marione, Director of Planning	Approved - Nov 12 2021
Annisia Cialone, HEDC Director	Approved - Nov 12 2021
Ray Reddington, Attorney	Approved - Nov 15 2021
John Metro, Acting Business Administrator	Approved - Nov 17 2021

INCLUSIONARY ZONING -- Tier Map

JERSEY CITY, NJ

October 21, 2021

-  Tier 1 - Low, Moderate, & Middle Income Tracts (<120% AMI)
Ten Percent (10%) On-Site Set-Aside
-  Tier 2 - Upper Income Tracts (>=120% AMI)
Fifteen Percent (15%) On-Site Set-Aside
-  N.J.S.E.A. (Not applicable)



METHOD: The tiers are based on Median Family Income by tract as a percentage of Area Median Family Income. The Median Family Income of \$84,700 is sourced from HUD and is reflective of the Jersey City FMR Metro Area from 2021. The tract level data for Median Family Income is from the 2019 American Community Survey 5-year estimates.

Chapter 187 (Inclusionary Zoning)

§ 187-1 – Purpose

The purpose of this Chapter is to create mixed income housing through new construction to assist the City in promoting the creation of Inclusionary Developments and Affordable Housing as the City grows and attracts new market-rate residential development.

§ 187-2 – Definitions

AFFORDABLE HOUSING means residential housing that is restricted for occupancy by households whose combined annual income for all members does not exceed eighty percent (80%) of the median income. This term shall refer to the broad classification, and not be confused with more specific terms that define different income divisions, such as very-low-income, low-income, and moderate-income.

APPROVING AUTHORITY means the Zoning Board of Adjustment or the Planning Board, whichever land use board has jurisdiction over the subject application.

DEVELOPER means any person, partnership, association, entity, 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.

DEVELOPMENT means the division of a parcel of land into two or more parcels, the construction, redevelopment, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use 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.

FHA means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.) as has been subsequently amended.

INCLUSIONARY DEVELOPMENT means a development that contains both affordable housing units and market-rate housing units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

LOW-INCOME HOUSEHOLD means a household with a total gross annual household income equal to fifty percent (50%) or less of the median household income.

LOW-INCOME UNIT means a restricted unit that is affordable to a low-income household.

MARKET-RATE UNITS means housing not restricted to very-low-, low-, and moderate-income households that may sell or rent at any price.

MEDIAN-INCOME means the median income by household size for Region 1 (Hudson County's region), as further defined in Chapter 188.

MODERATE-INCOME HOUSEHOLD means a household with a total gross annual household income in excess of fifty percent (50%) but less than eighty percent (80%) of the median household income.

MODERATE-INCOME UNITS means a restricted unit that is affordable to a moderate-income household.

RESIDENTIAL means any real property and the improvements, buildings, structures or house thereon, whether single, two-family or multi-family, whether or not owner occupied, used for residential purposes.

UHAC means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq., as may be supplemented or amended.

VERY-LOW-INCOME HOUSEHOLD means a household with a total gross annual household income equal to thirty percent (30%) or less of the median household income.

VERY-LOW-INCOME UNIT means a restricted unit that is affordable to a very-low-income household.

§ 187-3 – Applicability and Exemptions

A. The following developments shall comply with the affordable housing set-aside and other requirements of this Chapter:

1. All developments with a residential component, including mixed-use developments for which a developer requests and/or obtains five (5) or more residential units or five-thousand (5,000) or more square feet of residential floor area (inclusive of residential hallways and egress areas) (i) as a result of variance(s) pursuant to N.J.S.A. 40:55D-70(c) and (d); (ii) as a result of rezoning; or (iii) as the result of the adoption of a new or amended redevelopment/rehabilitation plan pursuant to the Local Redevelopment and Housing Law.
 - (i) No subdivision shall be permitted or approved for the purpose of avoiding compliance with this Chapter. A developer may not, for example, subdivide a project into two lots and then plan each of them to produce a number of units below the threshold. The approving authority may impose any reasonable conditions to ensure such compliance.
2. All developments with a residential component, including mixed-use developments that obtain low income housing tax credits and/or tax-exempt bond financing from the New Jersey Housing Mortgage Finance Agency, funding from the Economic

Development Authority Aspire program or similar program, and/or any other State support pursuant to N.J.S.A. 52:27d-329.9(b).

B. The following developments shall be exempt from the requirements of this Chapter:

1. Developments less than fifteen (15) total residential units.
2. Developments undertaken by the Jersey City Housing Authority or a non-profit corporation for the purpose of developing, through new construction or substantial rehabilitation, residential property in which at least fifty percent (50%) of the total residential units in the development are for very-low-, low-, and/or moderate-income households.

C. Nothing herein precludes the City of Jersey City or Approving Authority from requiring an affordable housing set-aside in a development not required to have a set-aside pursuant to this Chapter or requiring a higher affordable housing set-aside in any development so long as it is consistent with N.J.S.A. 52:27D-311(h) and other applicable law. This provision does not grant the City or Approving Authority any additional authority beyond what they already possess, and is intended to reserve the right to exercise existing authority in accordance with applicable law. For example, the City reserves the right when it conveys municipally-owned land or permits development to occur on municipally-owned land to require a higher set-aside of affordable housing in exchange.

§ 187-4 – Affordable Housing Set-Aside

A. Each development subject to this Chapter shall contain an affordable housing set-aside subject to the following:

1. Tier 1 – Developments in Low, Moderate, or Middle Income Census Tracts. The minimum on-site affordable housing set-aside for developments in this tier shall be ten percent (10%) of the total number of dwelling units in the development. Low Income Census Tracts are defined as tracts below fifty percent (50%) of area median income. Moderate Income Census Tracts are defined as tracts between fifty percent (50%) and below eighty percent (80%) of area median income. Middle Income Census Tracts are defined as tracts between eighty percent (80%) and below one-hundred-and-twenty percent (120%) of area median income. Developments that obtain a tax abatement/payment in lieu of taxes from the City shall provide a fifteen percent (15%) minimum on-site affordable housing set-aside of the total number of dwelling units.
2. Tier 2 – Developments in Upper Income Census Tracts. The minimum on-site affordable housing set-aside for developments in this tier shall be fifteen percent (15%) of the total number of dwelling units in the development. Upper Income Census Tracts are defined as tracts at or above one-hundred-and-twenty percent (120%) of area median income.

3. Irrespective of Census Tract or Tier, all developments that obtain low income housing tax credits and/or tax-exempt bond financing from the New Jersey Housing Mortgage Finance Agency, funding from the Economic Development Authority Aspire program or similar program, and/or any other State support pursuant to N.J.S.A. 52:27D-329.9(b) shall contain a minimum on-site affordable housing set-aside of at least twenty percent (20%) of the total number of dwelling units in the development. Any development that uses any of these funding sources shall disclose this information as a part of their Affordable Housing Agreement (AHA) as required in Chapter 188 of the Jersey City Municipal Code.
- B. When the calculation of the affordable housing set-aside results in a fractional affordable unit, the fraction shall be rounded up if the fraction is one-half (.5) or higher. This shall mean that the affordable housing unit shall be provided. When the fraction is less than one-half, the developer shall provide a payment in lieu of the fractional unit. The payment shall be calculated based on a pro rata basis of \$180,000.00 per unit.
 - C. Any payment in lieu of a fractional affordable unit shall be fulfilled by the developer in two installments. The first installment shall be at least fifty percent (50%) of the full payment and is payable upon a non-appealable board approval and the second installment or remainder is payable prior to the first certificate of occupancy in the development. All payments shall be deposited into the City of Jersey City Affordable Housing Trust Fund.

§ 187-5 – Additional Standards for Affordable Housing

- A. A developer subject to the affordable housing set-aside may request, and the approving authority may, at its discretion, grant additional incentives for affordable housing, including but not limited to an increase in density, height, bulk, and/or floor area ratio.
- B. A developer subject to the affordable housing set-aside shall be afforded an exemption from any applicable minimum parking requirement for the purpose of aiding in the construction of affordable housing units.

§ 187-6 – Tier Map

- A. The boundaries of the Tiers referenced in this Chapter are as specified in the map entitled “INCLUSIONARY ZONING — Tier Map,” which is attached hereto.
- B. The Division of City Planning is directed to examine the Tier Map at least every five (5) years and, if changes are proposed based on current housing characteristics, such as changes in median income and availability of affordable housing in different areas of the City, to submit a proposed revised map to the Municipal Council by January 1 of each fifth year. The Municipal Council may then choose whether to approve the revised map by resolution.

- C. The Tier Map shall remain in effect until a new map is approved by the City Council. The map shall be on file and available for public inspection with the Division of Affordable Housing. The Tier Map shall be binding while effective and no exception to the map will be granted.

§ 187-7 – Compliance

- A. Prior to the approval of any site plan applications, each developer subject to the Chapter must prove compliance with this Chapter to the approving authority. Prior to the issuance of any building permit, each developer must have an approved affordable housing plan in the form of a Division of Affordable Housing Checklist and enter into an affordable housing agreement prior to the issuance of any CO with the City in accordance with Chapter 188.
- B. The bedroom distribution and income distribution of the affordable housing units shall comply with all applicable requirements of Chapter 188 and UHAC, but for the following exceptions:
1. Thirteen percent (13%) of the affordable housing units within each bedroom distribution must be restricted as very-low-income units.
 2. In developments that produce ten (10) or fewer on-site affordable units, the bedroom distribution of the affordable units may mirror the bedroom distribution of the market-rate units so long as at least fifty percent (50%) of the units are low-income units and at least one affordable unit is a three-bedroom unit.
- C. Affordable units shall be integrated with the market-rate units, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) or floor(s) from the market-rate units. In buildings with multiple dwelling units, this shall mean that the affordable units shall be generally distributed within each building with market-rate units. The affordable units shall also be of the same type as the market-rate units (e.g., if the market-rate units are non-age-restricted family units, the affordable units shall be non-age-restricted family units as well). The residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market-rate units.
- D. Construction of the affordable units and market-rate units shall be phased in compliance with N.J.A.C. 5:93-5.6(d).
- E. Developers shall comply with eligibility determination procedures by providing adequate documentation as set forth within Chapter 188 to the satisfaction of the Division of Affordable Housing.
- F. The Division of Affordable Housing shall be responsible for monitoring compliance and recordkeeping for all Affordable Housing Agreements produced as a result of this Article.

§ 187-8 – Administrative Fee

Each development subject to this Chapter shall pay a two-thousand-dollar (\$2,000) fee to the City of Jersey City to cover the administrative costs associated with formalizing the Affordable Housing Agreement with the Division of Affordable Housing.

§ 187-9 – Violations

Upon a violation of any of the provisions of this Chapter or the Affordable Housing Agreement, the Director of Affordable Housing or other designated City official shall give written notice to the developer specifying the nature of the violation and require corrective action within sixty (60) days of the notice.

If the developer does not correct the violation within the time specified, the developer shall, for each and every violation, be fined up to a maximum of two-thousand dollars (\$2,000) a day that such violation continues after such notice until the violation is corrected.

§ 187-10 – Severability

If any article, section, subsection, sentence, clause or phrase of this Chapter is, for any reason, held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Chapter and they shall remain in full force and effect and shall be deemed valid and effective.

§ 187-11 – Inconsistencies

In the event of any inconsistencies between the provisions of this Chapter and any prior ordinance of the municipality, the provisions hereof shall be determined to govern and those inconsistent provisions shall be repealed to the extent of such inconsistency.

§ 187-12 – Effective Date and Scope

This Chapter shall take effect upon its adoption by the Municipal Council. The provisions of this Chapter shall be applicable within the entire municipality upon final adoption and shall become a part of the Jersey City Code once adopted and incorporated in the official copies of the City Code. All references to the prior version of Chapter 187 in existing redevelopment/rehabilitation plans and in the City Code shall be replaced with this amended version after it takes effect.