

**RESOLUTION**  
of the  
**BOROUGH OF NEW PROVIDENCE**  
Resolution No. 2019-178

Council Meeting Date: 07-15-2019

Date Adopted: 07-15-2019

TITLE: RESOLUTION OF THE COUNCIL OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION, STATE OF NEW JERSEY ENDORSING THE AMENDED HOUSING ELEMENT AND FAIR SHARE PLAN ADOPTED BY THE PLANNING BOARD

Councilperson Geoffroy submitted the following resolution, which was duly seconded by Councilperson Cumiskey.

WHEREAS, on July 7, 2015, the Borough of New Providence (hereinafter “New Providence” or the “Borough”) filed a declaratory action with the Superior Court of New Jersey pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan, to be amended as necessary, satisfies its obligation to create the realistic opportunity to meet its “fair share” of the regional need for low- and moderate-income housing pursuant to the “Mount Laurel doctrine;” and

WHEREAS, in connection with this lawsuit, the Borough simultaneously sought, and ultimately secured, a protective order providing New Providence and its Planning Board immunity from all exclusionary zoning lawsuits while the Borough pursued approval of its Amended Housing Element and Fair Share Plan, which is still in full force and effect; and

WHEREAS, the Borough engaged in negotiations with the Fair Share Housing Center (“FSHC”) and executed a settlement agreement with FSHC on December 16, 2016;

WHEREAS, a Fairness Hearing was held on January 13, 2017, at which time the settlement agreement was approved, and said approval was later memorialized in an Order dated January 30, 2017; and

WHEREAS, on March 7, 2017, the Borough Planning Board adopted a Housing Element and Fair Share Plan (“HEFSP”) effectuating the Court order; and

WHEREAS, prior to a Compliance Hearing but subsequent to the Fairness Hearing and adoption of the HEFSP, the Borough engaged in negotiations with Linde North America (“Linde”) and C R Bard (“Bard”); and

WHEREAS, as a result of those negotiations, the Borough entered into a new agreement with FSHC, Murray Hill, LLC (successor of Linde), and Becton Dickinson (successor of Bard) and a separate agreement with Linde; and

WHEREAS, a second Fairness Hearing was held on April 5, 2019, at which time the settlement agreements were approved, and said approval was later memorialized by an Order entered by the County on April 8, 2019; and

WHEREAS, in accordance with the terms of the settlement agreements and the Court’s April 8, 2019 Order, the Borough’s planner prepared an Amended Housing Element and Fair Share Plan; and

WHEREAS, upon notice duly provided pursuant to N.J.S.A. 40:44D-13, the Planning Board held a public hearing on the Amended Housing Element and Fair Share Plan on July 9, 2019 and adopted the 2019 Amended Housing Element and Fair Share Plan on the same day; and

WHEREAS, a true copy of the resolution of the Planning Board adopting the 2019 Amended Housing Element and Fair Share Plan is attached hereto as Exhibit A; and

WHEREAS, the Borough Council of the Borough of New Providence wishes to endorse the 2019 Amended Housing Element and Fair Share Plan and seeks approval of the 2019 Amended Housing Element and Fair Share Plan from the Court.

BE IT RESOLVED, by the Borough Council of the Borough of New Providence in the County of Morris, and the State of New Jersey:

1. That it hereby endorses the Amended Housing Element and Fair Share Plan, as adopted by the New Providence Borough Planning Board on July 9, 2019 via the Planning Board resolution, attached hereto as Exhibit A.
2. That it authorizes and directs its professionals to file with the Court (i) the Amended Housing Element and Fair Share Plan, (ii) the resolutions of the Planning Board adopting and the Borough Council endorsing the Amended

- Housing Element and Fair Share Plan, and (iii) any additional documents the professionals deem necessary or desirable.
3. That it authorizes its professionals to seek Court approval of the Amended Housing Element and Fair Share Plan at a properly noticed Compliance Hearing.
  4. That it reserves the right to amend the Amended Housing Element and Fair Share Plan, should that be necessary.

APPROVED, this 15<sup>th</sup> day of July, 2019.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUMISKEY	X			
DESARNO	X			
GENNARO	X			
GEOFFROY	X			
MUÑOZ			X	
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 15<sup>th</sup> day of July, 2019.

Wendi B. Barry, Borough Clerk

**ADOPTING THE 2019 AMENDED HOUSING ELEMENT AND FAIR SHARE PLAN AND AMENDING THE MASTER PLAN FOR THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION, STATE OF NEW JERSEY**

**WHEREAS**, N.J.S.A. 40:55D-28 permits municipalities to, after a public hearing, amend a master plan or component thereof, to guide the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare; and

**WHEREAS**, on or about July 7, 2015, the Council of the Borough of New Providence (the “Council”) filed a Complaint (Docket No. UNN-L-2442-25) in the Law Division of the Superior Court of New Jersey, Union County (the “Court”) seeking a declaration of its compliance with the Mount Laurel Doctrine and Fair Housing Act of 1987, N.J.S.A. 53:27D-301, et seq., in accordance with In re: N.J.A.C. 5:96 and 5:97, 221 N.J. 30 (2015); and

**WHEREAS**, in March and April of 2019, a document entitled “Affordable Housing Settlement Agreement” was signed by the Mayor, Fair Share Housing Center (“FSHC”), Murray Hill, LLC by Linde Gas North America, and Becton Dickinson and Company (“BD”), which (1) settled litigation between the Borough, FSHC, Murray Hill, LLC, and BD; (2) established the Borough’s “fair share” of the regional need for very low, low-, and moderate-income housing; and (3) delineated the actions that must be taken for the Borough to satisfy its fair share; and

**WHEREAS**, in March and April of 2019, a document entitled “Affordable Housing Agreement” was signed by the Mayor and Murray Hill, LLC as a successor to Linde North America, Inc, which settled litigation with Murray Hill, LLC; and

**WHEREAS**, on April 5, 2019, a Fairness Hearing took place, and on April 8, 2019 an Order was entered by the Court approving the proposed settlements; and

**WHEREAS**, upon notice duly provided pursuant to N.J.S.A. 40:55D-13, on July 9, 2019, the Planning Board of the Borough of New Providence held a public hearing to consider adoption of the amended Housing Element and Fair Share Plan to implement the settlement agreements; and

**WHEREAS**, the Planning Board of the Borough of New Providence reviewed and considered the extensive report, dated June 2019, prepared by the Borough’s Consulting Professional Planners, Heyer, Gruel & Associates and otherwise entered said report into evidence and heard the testimony of McKinley Mertz, PP, AICP relative to the contents and conclusions set forth in that report; and

**NOW, THEREFORE BE IT RESOLVED**, that, upon the conclusion of the public hearing, the Planning Board, having reviewed the proposed 2019 Amended HEFSP by Heyer, Gruel & Associates, adopts the 2019 Amended HEFSP, attached hereto, finding that it will guide the use of lands in the municipality in a manner which protects public health and safety and promotes the general welfare in accordance with N.J.S.A. 40:55D-28; and

**BE IT FURTHER RESOLVED**, that a copy of this Resolution and the attached Amended HEFSP for the Borough of New Providence, County of Union, State of New Jersey, as prepared by Heyer, Gruel & Associates, shall be sent to the Union County Planning Board and notice of the adoption of same shall be sent to the Municipal Clerk of each adjoining municipality; and

**BE IT FURTHER RESOLVED**, that notification of the adoption be published in an official newspaper of the Borough of New Providence Planning Board.

**ADOPTED** on this 9th day of July 2019.

Motion to approve: Mayor Morgan  
Second: Mr. Sartorius  
Those in Favor: Mr. Castagna, Mr. Cumiskey, Mr. Hoefling,  
Mr. Keane, Mayor Morgan, Mr. Sartorius and  
Chairman Lesnewich  
Those Opposed: None  
Abstentions: None  
Recusals: None  
Absences: None

The foregoing is herein certified to be a true copy of the Resolution adopted by the Planning Board at its hearing of July 9, 2019.



Margaret Koontz, Secretary



Robert K. Lesnewich, Chairman

Date of Resolution: July 9, 2019  
Date of Publication: July 12, 2019  
Place of Publication: Courier News