



Englewood

City Manager's Office

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TO: Honorable City Council and Mayor

FROM: Robert S. Hoffmann, City Manager

DATE: August 4, 2023

SUBJECT: Questions regarding Overlay Zone

1. What is an overlay zone (Ordinance 23-22)?

An overlay zone provides the property owner with a second option as of right on how to use their property. The textbook definition of an overlay zone is a regulatory tool that creates a special zoning district, placed over an existing base zone(s), which identifies special provisions in addition to those in the overlay zone. It creates an additional permitted use inside the zone.

2. Why did I receive the letter about the overlay zone?

Your property is either in one of the three overlay zones or, within 200 feet of the overlay zones. State law requires the City send you this notice with a copy of the proposed overlay ordinance so that you are aware of the potential additional uses for your property.

3. Do I need to do anything such as fill out a form?

No.

4. Will I lose my house?

No. The City is not and will not take your property.

5. Why is my property being rezoned?

Your property is not being rezoned. Your property retains its primary zone. Your property will have an additional zone that will provide you with the opportunity to use your property in the future for Affordable Housing if your property can meet the requirements established in the overlay zone.

6. Is the Library or other government buildings being torn down for development of Affordable Housing?

No

7. Will my property value go down?

No. Your property's primary zoning designation stays the same. You now have a second option to consider. Past history indicates that your property value will likely go up.

8. Are Pindle Avenue and White Street in the overlay zone?

Yes

9. Is development in flood zones included?

Yes. Englewood is fully developed. The areas in flood zones are already developed. If there is redevelopment then the drainage must be improved to meet current (2023) standards, which were either non-existent or much more relaxed when the property was originally developed. The new standard became effective in July of 2023.

10. Has the City assessed its infrastructure and service needs for increased housing?

Yes. If Affordable Housing is developed in the Overlay Zone, the new development must conform to all of the overlay Zoning requirements as well as all state, county and municipal development regulations, including the strict DEP storm water regulations.

11. What is the difference between Affordable Housing and Low Income Housing?

Affordable Housing is housing available to households earning between 50% and 80% of the median regional income. and households earning less than 50% of the regional median income. Low income housing is typically housing that is subsidized by various state and federal programs.

12. What is the difference between Very Low, Low and Moderate Income households?

In 2022 Affordable Housing Very Low Income for a single person was \$24,286. Low Income was \$40,477 and Moderate Income was \$64,764.

13. Is this gentrification?

No. This type of Overlay zoning provides the opportunity to build and live in Affordable Housing. This is the opposite of gentrification.

14. Will there be compensation for adjoining property owners if Affordable Housing is built next door?

No. During the regular assessment process values can be adjusted upwards or downwards as necessary.

15. How will this overlay zoning affect commercial districts as well as Mom and Pop stores?

The owners of the commercial property continue to have the right to lease their property to whomever they choose based on permitted uses.

16. Can the overlay zone be changed?

No. The overlay zone will be valid through July 1, 2025. The overlay zone is part of a negotiated settlement approved by the Court.

17. Do residents have to sell their home to Affordable Housing Developers?

No. The resident has the right to live in their home or sell it if they so choose.

18. What is "Builders Remedy"?

It is a judicial mechanism for a developer to sue a municipality so that they can exceed or set aside the zoning regulations for their parcel of property.

19. What gives builders the right to sue the City for the purpose of constructing Affordable Housing?

The Mt. Laurel doctrine was developed in a series of New Jersey Supreme Court cases beginning in 1975. The 1985 Fair Housing Act declared that every municipality in the State has a constitutional obligation to provide a realistic opportunity through the adoption of zoning ordinances for the construction of its fair share of the region's low and moderate income housing.

20. What happened in Englewood Cliffs?

They lost their immunity from builder remedy lawsuits. This allows developers to dictate where zoning for affordable housing should be placed. A State Judge took over their Planning Board.

21. What are other towns doing?

Other towns are complying with their Court approved Affordable Housing obligations. Recently, our neighbor the Borough of Leonia adopted a similar overlay zone for complying with their Court approved Affordable Housing settlement.

22. Who will decide where Affordable Housing units will be placed?

Affordable housing can be developed in all of the overlay zones but only if the property owner can meet all of the requirements of the zoning ordinance.

23. Why aren't industrial areas included in the overlay zones?

Industrial areas are designed to create jobs. Eliminating industrial areas eliminates the opportunity for job growth and attainment of the American Dream.

24. If the City is fully developed, why are we creating an opportunity for more housing units?

There is a constitutional mandate to continually create opportunities for Affordable Housing. The City is now attempting to comply with Round 3 of this constitutional mandate. Round 4 is scheduled to begin on July 1, 2025.

25. Is this because the legislature did not set laws?

Judges have assumed the responsibility and the duties of the Council for Affordable Housing (COAH) because COAH was found to be nonfunctional for a period that exceeded a decade (10 years).

26. Does the City of Englewood have Affordable Housing credits?

Yes, and the City has taken full advantage of them.

27. Are builders really going to build 4,000 housing units?

No. It is virtually impossible for that number of units to be built. Properties would have to be assembled to meet the minimum requirements of the respective overlay ordinance. This 4,000 number was calculated based upon acreage (regardless of whether it was already developed).

28. Why not push back through litigation?

The City approved a settlement of the litigation on November 1, 2022. The settlement was approved by the Court in January 2023. This provides Englewood with Round 3 Builders Remedy protection. The City in the future would have the opportunity to pursue other legal avenues if required for the protection of its zoning code.

29. Would a veto of the ordinance imperil the City?

Yes. A mayoral veto, if not over-ridden by the Council, would provide an opportunity for the City to lose its existing and effective zoning protection and immunity. This would allow builders to file lawsuits that would result in their ability to build significantly larger projects wherever they want to build them. The City effectively loses control of its ability to designate the location of the developments providing affordable housing.



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