

**BOROUGH OF ALBURTIS  
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 516

(Duly Adopted January 6, 2014)

AN ORDINANCE ADDING SECTION 21-106 TO THE ALBURTIS CODIFIED ORDINANCES (RELATING TO ZONING—PURPOSE AND INTERPRETATION—COMMITMENT TO FAIR HOUSING) TO CODIFY THE BOROUGH’S COMMITMENT TO FAIR HOUSING IN CONFORMANCE WITH THE FEDERAL FAIR HOUSING ACT; AMENDING SECTION 21-236 OF THE ALBURTIS CODIFIED ORDINANCES (RELATING TO ZONING—DEFINITIONS AND USAGE—ELDERLY HOUSING) TO REDEFINE THE TERM “ELDERLY HOUSING” UNDER THE ZONING ORDINANCE TO BE SIMILAR TO THE TERM “HOUSING FOR OLDER PERSONS” WITHIN THE MEANING OF THE FEDERAL FAIR HOUSING ACT EXEMPTION FOR SUCH HOUSING FROM THE REQUIREMENTS OF THE ACT PROHIBITING DISCRIMINATION BECAUSE OF FAMILIAL STATUS; AND AMENDING SECTION 21-1809 OF THE ALBURTIS CODIFIED ORDINANCES (RELATING TO ZONING—ZONING HEARING BOARD—VARIANCES) TO AUTHORIZE ZONING VARIANCES WHEN NECESSARY TO AFFORD A HANDICAPPED PERSON EQUAL OPPORTUNITY TO USE AND ENJOY A DWELLING OR TO PERMIT REASONABLE MODIFICATIONS OF EXISTING PREMISES IF NECESSARY TO AFFORD A HANDICAPPED PERSON FULL ENJOYMENT OF THE PREMISES OF A DWELLING.

**WHEREAS**, the Borough of Alburtis is empowered to enact, amend, and repeal zoning ordinances under Article VI of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10601 *et seq.*; and

**WHEREAS**, Borough Council has enacted a zoning ordinance, which has been amended from time to time and codified as Chapter 21 of the Alburtis Codified Ordinances; and

**WHEREAS**, Lehigh County, Northampton County, the cities of Allentown, Bethlehem, and Easton, and the Lehigh Valley Economic Development Corporation recently performed a Regional Analysis of Impediments to Fair Housing (“**Regional AI**”) to sat-

isfy U.S. Department of Housing and Urban Development (“**HUD**”) requirements for communities receiving HUD grant fund to periodically analyze factors that may affect housing opportunities and choice for the residents of the region or result in discrimination on the basis of race, color, religion, sex, national origin, handicap/disability, or familial status made unlawful by the federal Fair Housing Act, as amended, 42 U.S.C. §§ 3601 – 3619; and

**WHEREAS**, a key part of the Regional AI is a review of each municipality’s zoning code to identify if any component could be perceived as creating impediments to fair housing; and

**WHEREAS**, upon reviewing the Regional AI’s analysis of the Borough’s zoning ordinance, Borough Council desires to amend the zoning ordinance in the manner set forth below to reduce the risk that the zoning ordinance could cause the Borough to violate the Fair Housing Act; and

**WHEREAS**, this zoning amendment is generally consistent with the Borough’s Comprehensive Plan (the Southwestern Lehigh County Comprehensive Plan – Alburdis, Emmaus and Macungie Boroughs and Lower Milford, Lower Macungie and Upper Milford Townships); and

**WHEREAS**, this Ordinance was proposed to Borough Council by the Alburdis Planning Commission, which reviewed this Ordinance at its meeting on November 26, 2013 and recommended its adoption; and

**WHEREAS**, at least thirty (30) days prior to the Council’s adoption of this Ordinance, the Borough submitted a copy of this Ordinance to the Lehigh Valley Planning Commission, to provide it with an opportunity to submit recommendations, in accordance with the provisions of 53 PA. STAT. ANN. § 10609(e); and

**WHEREAS**, the Lehigh Valley Planning Commission reviewed this Ordinance at its meeting on December 19, 2013 and returned the following comments for the Borough's use:

The Commission found the proposed amendments a matter of local concern and voted to offer no comment.

**WHEREAS**, at least thirty (30) days prior to the Council's adoption of this Ordinance, the Borough submitted a copy of this Ordinance to the Boroughs of Macungie and Emmaus, and to the Townships of Lower Macungie, Lower Milford, and Upper Milford to provide them with an opportunity to submit comments, in accordance with paragraph 6 of the Southwestern Lehigh County Comprehensive Plan Inter-Governmental Agreement and Ordinance. The Upper Milford Township Board of Supervisors considered the ordinance and informed the Borough that they believe the proposal to be generally consistent with the Southwestern Lehigh County Comprehensive Plan. No other comments were received; and

**WHEREAS**, on December 18, 2013 and December 25, 2013, the Borough published a public notice in the *East Penn Press*, a newspaper of general circulation in the Borough of Alburdis, of its intention to conduct a hearing on this Ordinance on January 6, 2014 at 7:00 P.M. in the Borough Hall, 260 Franklin Street, Alburdis, Pennsylvania, and to consider the adoption of this Ordinance thereafter. The notice stated the particular nature of the matter to be considered at the hearing, as provided in the title of this Ordinance; and

**WHEREAS**, immediately prior to the vote of Borough Council enacting this Ordinance, Borough Council conducted a hearing on this Ordinance, pursuant to 53 PA. STAT. ANN. § 10609(b), and did not substantially change or revise this Ordinance as a result of the hearing or the comments of the Lehigh Valley Planning Commission or other municipalities;

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Alburtis, Lehigh County, Pennsylvania, as follows:

**SECTION 1.** Chapter 21, Article I of the Codified Ordinances (relating to Zoning—Purpose and Interpretation) is amended by adding thereto the following new section 21-106:

**§ 21-106 Commitment to Fair Housing.**

The Borough of Alburtis is committed to promoting, through fair and lawful procedures, the opportunity for each person to obtain housing without regard to his/her race, color, religion, sex, handicap/disability, familial status, or national origin. This commitment is grounded upon a recognition of the right of every person to have access to adequate housing of his/her choice without regard to his/her race, color, religion, sex, handicap/disability, familial status, or national origin. All Borough ordinances shall be interpreted so as not to discriminate against any person on the basis of race, color, religion, sex, handicap/disability, familial status, or national origin in violation of the federal Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, and the regulations issued thereunder.

**SECTION 2.** Codified Ordinances § 21-236 (relating to Zoning—Definitions and Usage—Elderly Housing) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

**§ 21-236 Elderly Housing.**

**(a) In General.** The term “Elderly Housing” shall mean ~~dwelling units arranged, whether singly or in various configurations such as single-family attached or multifamily, and designed for and used exclusively by senior citizens~~ a housing facility or community (within the meaning of subsection (b)), which satisfies either the requirements of subsection (c)

(relating to 62 and Over Housing) or the requirements of subsection (d) (relating to 55 and Over Housing).

**(b) Housing Facility or Community.** For purposes of this Section, the term “housing facility or community” means a dwelling or group of dwelling units governed by a common set of rules, regulations, or restrictions, including but not limited to a condominium association, a cooperative, a property governed by a homeowners’ or resident association, a leased property under common private ownership, a mobile home park, and a manufactured housing community, *provided* that a portion or portions of a single building shall not constitute a “housing facility or community.”

**(c) 62 and Over Housing.**

**(1) In General.** Except as provided in paragraph (2), housing satisfies the requirements of this subsection (c) if it is intended for, and *solely* occupied by, persons sixty-two (62) years of age or older.

**(2) Exceptions.** Housing still satisfies the requirements of this subsection (c) even though—

**(A)** there are unoccupied units, *provided* that such units are reserved for occupancy by persons sixty-two (62) years of age or older;

**(B)** there are units occupied by persons under sixty-two (62) years of age who are employees of the housing or family members of such employees residing in the same unit, *provided* the employees perform substantial duties directly related to the management or maintenance of the housing; and/or

**(C)** there are persons under sixty-two (62) years of age residing in such housing who have continuously resided in such housing since September 13, 1988 or earlier.

**(d) 55 and Over Housing.** Housing satisfies the requirements of this subsection (d) if—

**(1)** at least eighty percent (80%) of its occupied units are occupied by at least one person fifty-five (55) years of age or older (as fur-

ther described in subsection (e) and with the exceptions provided in subsection (e));

(2) the housing facility or community published and adheres to policies and procedures that demonstrate its intent to operate as housing for persons fifty-five (55) years of age or older in accordance with this subsection (d) (as further described in subsection (f)); and

(3) the housing facility or community must be able to produce verification of compliance with paragraph (1) and subsection (e) through reliable surveys and affidavits whenever required in response to a request by the Borough or a complaint filed under title 24 of the Code of Federal Regulations (as further described in subsection (g)).

(e) **80% Occupancy.** For purposes of subsection (d)(1)—

(1) **Occupied Unit.** The term “occupied unit” means—

(A) a dwelling unit that is actually occupied by one or more persons; or

(B) a temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(2) **Occupied by a Person 55 and Over.** A dwelling unit is considered to be occupied by at least one person fifty-five (55) years of age or older if—

(A) at least one occupant of the dwelling unit is fifty-five (55) years of age or older; or

(B) the dwelling unit is temporarily vacant, and at least one of the occupants of the dwelling unit immediately prior to the date on which it was temporarily vacated was fifty-five (55) years of age or older.

(3) **Newly Constructed Housing.** Newly constructed housing for first occupancy after March 12, 1989 need not comply with the requirements of subsection (d)(1) until at least twenty-five percent (25%) of the units are occupied. “Newly constructed housing” includes a facility or community that has been wholly unoccupied for at least ninety (90) days prior to re-occupancy due to renovation or rehabilitation.

**(4) Exceptions.** Housing still satisfies the requirements of subsection (d)(1) even though—

**(A)** there are unoccupied units, *provided* that at least eighty percent (80%) of the occupied units are occupied by at least one person fifty-five (55) years of age or older;

**(B)** there are units occupied by persons under fifty-five (55) years of age who are employees of the housing facility or community or family members of such employees residing in the same unit, *provided* the employees perform substantial duties directly related to the management or maintenance of the housing facility or community;

**(C)** there are units occupied by persons under the age of fifty-five (55) who are necessary to provide a reasonable accommodation to disabled residents as required by 24 C.F.R. § 100.204; and/or

**(D)** the housing was in existence on September 13, 1988, and at that time under eighty percent (80%) of the occupied units were occupied by at least one person fifty-five (55) years of age or older, *provided* that at least eighty percent (80%) of the units occupied by new occupants after September 13, 1988 are occupied by at least one person fifty-five (55) years of age or older.

**(5) Fractions of a Unit.** Where application of the eighty percent (80%) rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person fifty-five (55) years of age or older.

**(6) Age Restrictions For Units Not Occupied By At Least One Person Age 55 or Over.** The housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one person fifty-five (55) years of age or older, so long as the housing facility or community complies with the provisions of subsection (f).

**(f) Intent to Operate as 55 and Over Housing.** For purposes of subsection (d)(2):

**(1)** The following factors, among others, are considered relevant in determining whether a housing facility or community has complied with the requirements of subsection (d)(2):

(A) The manner in which the housing facility or community is described to prospective residents;

(B) Any advertising designed to attract prospective residents;

(C) Lease provisions;

(D) Written rules, regulations, covenants, deed or other restrictions;

(E) The maintenance and consistent application of relevant procedures;

(F) Actual practices of the housing facility or community; and

(G) Public posting in common areas of statements describing the facility or community as housing for persons fifty-five (55) years of age or older.

(2) Phrases such as “adult living”, “adult community”, or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons fifty-five (55) years of age or older.

(3) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of subsections (d)(1), (d)(2), (e), and (f)(1).

(g) **Verification of Occupancy.** For purposes of demonstrating compliance with subsection (d)(3)—

(1) A housing facility or community must have procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is fifty-five (55) years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement, and must provide for regular updates (at least once every two years), through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. A survey may include information regarding whether any units are occupied by persons described in subsection (e)(4)(B), (C), and (D).



(2) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community: driver's license; birth certificate; passport; immigration card; military identification; any other state, local, national, or international official documents containing a birth date of comparable reliability; or a certification in a lease, application, affidavit, or other document signed by any member of the household age eighteen (18) or older asserting that at least one person in the unit is fifty-five (55) years of age or older. A housing facility or community shall consider any one of these forms of verification as adequate for verification of age, provided that it contains specific information about current age or date of birth.

(3) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this subsection (g).

(4) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person fifty-five (55) years of age or older. Such evidence may include:

(A) Government records or documents, such as a local household census;

(B) Prior forms or applications; or

(C) A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

(5) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

(h) **Construction.** The definition provided by this Section is included in order to *expand* the opportunities for residential uses primarily occupied by older persons. Thus, other provisions of this Chapter may permit Elderly Housing under certain conditions and in certain locations even though similar residential uses which do not qualify as Elderly Housing would not be so permitted. However, nothing in this Chapter

shall be construed to prohibit any residential use which satisfies all applicable requirements of this Chapter merely because that use also qualifies as Elderly Housing. For example, an Elderly Housing development of single-family detached dwellings is permitted in the R-1 Low Density Residential Zoning District so long as it satisfies all applicable requirements for single-family detached dwellings in that zoning district.

**SECTION 3.** Codified Ordinances § 21-1809 (relating to Zoning—Zoning Hearing Board—Variances) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

**§ 21-1809 Variances.**

(a) **In General.** The Board shall hear requests for variances where it is alleged that the provisions of this Chapter inflict unnecessary hardship upon the applicant. The Board may, by rule, prescribe the form of application and may require preliminary application to the Zoning Officer. The Board may grant a variance, *provided* the following findings are made where relevant in a given case:

\* \* \*

**(b) Fair Housing Act Compliance.**

**(1) In General.** The Board shall also hear requests for variances and grant variances providing reasonable accommodations to the provisions of this Chapter when such accommodations may be necessary—

**(A) to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas; or**

**(B) to permit reasonable modifications of existing premises occupied or to be occupied by such a handicapped person if such modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling.**

**(2) Handicapped Person.** For purposes of this subsection (b), the term “handicap”, with respect to a person, shall mean a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment, all as further defined at 24 C.F.R. § 100.201.

**(3) Construction.** This subsection (b) shall be construed and applied so as to avoid unlawful discrimination under the Fair Housing Act, as amended, and its implementing regulations, especially 42 U.S.C. § 3604(f)(3)(A) and (B), and 24 C.F.R. §§ 100.203 and 100.204.

**(b) (c) Conditions.** In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this ~~chapter~~ Chapter.

**SECTION 4.** The Executive Secretary of the Borough shall send a certified copy of this Ordinance to the Lehigh Valley Planning Commission within thirty (30) days after the date of enactment, as required by 53 PA. STAT. ANN. § 10609(g).

**DULY ORDAINED** and **ENACTED** by the Borough Council of the Borough of Alburtis, this 6<sup>th</sup> day of January, 2014, in lawful session duly assembled.

BOROUGH COUNCIL  
BOROUGH OF ALBURTIS

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Steven R. Hill, President

Attest:

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Sharon Trexler, Executive Secretary

**AND NOW**, this 6<sup>th</sup> day of January, 2014, the above Ordinance is hereby APPROVED.

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Kathleen Palmer, Mayor