



Clustering Ordinance

Updated February 2012

For more information, see www.sustainablejersey.com.

The Clustering Ordinance action is one of four actions that can receive points as a Natural Resource Protection Ordinance for the Sustainable Jersey program. In general, Natural Resource Protection Ordinances are designed to provide municipalities with the ability to protect various resources within the community from possible harmful effects caused by development. Municipalities with Natural Resource Inventories (NRI) or Environmental Resource Inventories (ERI) should implement those ordinances that protect the vulnerable resources identified in the inventory. Ordinances are the body of public law that implement the goals of the local Master Plan and protect public assets like special environmental features identified in the Environmental or Natural Resource inventory.

Residential cluster development is a form of land development in which principal buildings and structures are grouped together on a site, thus saving the remaining land area for common open space, conservation, agriculture, recreation or public and semi-public uses. This type of cluster development is sometimes referred to as "contiguous clustering," which is described below.

Cluster development has a number of distinct advantages over conventional subdivision development. A well-planned cluster development concentrates dwelling units on the most buildable portion of the site and preserves natural drainage systems, vegetation, open space and other significant natural features that help control stormwater runoff and soil erosion. The common areas function as a trap for nutrients dissolved or suspended in stormwater runoff. Cost savings during construction are achieved by the reduction in street lengths, and utility installations. Later savings can be realized in street and utility maintenance, (less surface area that needs repaving and fewer feet of water and sewer line to maintain). Because dwelling units are placed closer together, refuse and other service vehicles negotiate over less street mileage, thus reducing travel time and fuel use. Where clustering is accompanied by higher-density residential land uses and the provision of pedestrian pathways and bikeways, especially

those that link to off-site activity centers, residents of the cluster development may walk and exercise more. Clustering also enhances the sense of community, allowing parents better supervision of children playing in common areas and promoting social interaction among neighbors. (Model Residential Cluster Development Ordinance, American Planning Association, <http://www.planning.org/research/smartgrowth/pdf/section47.pdf>)

Municipalities may also want to adopt noncontiguous clustering ordinances. New Jersey's Municipal Land Use Law permits municipalities to approve "planned developments" where two or more properties are treated as a single cluster development, even if they are not adjacent. The developer may group all of the development potential of the constituent lots into one or more growth areas, at a higher density than would normally be allowed, provided that the remaining areas are preserved. Municipalities seeking to use noncontiguous clustering should identify areas for planned developments in their Master Plans and must provide districts for such planned developments in their zoning ordinances.

Noncontiguous clustering is voluntary on the part of landowners and creates an additional option for subdividing and developing land. Noncontiguous clustering has been used in New Jersey to preserve farmland and open space. Some examples of noncontiguous clustering involve two properties, one of which is preserved and the other developed; in other examples, several properties are involved, only one of which is developed.

Who should lead and be involved with this action?

Ultimately these ordinances are adopted by the municipal governing body after approval of the Planning Board, but other commissions or boards, such as the Planning Board, sustainability committee, or Environmental Commission, can take the lead in developing and moving these ordinances forward with the help of municipal staff and professionals.

Timeframe

The timeframe varies as the time required to approve ordinances is a function of local processes. The more support there is for an ordinance, the faster is it likely to move through the process, since there will be less resistance. Early public involvement and adequate research is needed to gain public support and ease the adoption process.

Project Costs and Resource Needs

Depending on who is initiating it, researching and drafting of the ordinance can be conducted by municipal staff, the Environmental Commission, the Planning Board, the governing body or volunteers as well as private consultants.

Why is it Important?

Adopting a municipal clustering ordinance provides potential protection for critical natural resources. Clustered development resulting from this ordinance may enhance the long-term health and sustainability of municipal and state-wide ecosystems. Such natural resource protection ordinances preserve not only drinking water, soil, and habitat quality, but also the overall quality of life for New Jersey's municipalities and citizens.

What to do, and how to do it (“How to”)

Below we have listed the requirements for earning points for this action.

The Clustering Ordinance must meet the standards listed in section II of the “What to Do” section and be officially adopted prior to your submission for Sustainable Jersey points for this action.

We have provided extensive guidance and recommendations for implementing the action. You do not need to follow this guidance exactly as long as your final product meets the requirements.

I. Developing and Adopting a Natural Resource Protection Ordinance

Guidance is derived from ANJEC's Smart Growth Survival Kit

(http://www.anjec.org/pdfs/SG_Ordinances.pdf):

Follow [this link](#) for guidance about developing and adopting a Natural Resource Protection Ordinance.

II. Ordinance Structure:

The following describes the general structure for the Clustering Ordinance as well as the minimum requirements to receive Sustainable Jersey points for this action. While some ordinances will be slightly different in structure, the intent of the requirements listed shall be met. Please pay particular attention to the **standards** section.

A. Title - legal name by which an ordinance can be cited.

Requirement: The title should distinguish it from other requirements of the land-use code.

B. Purpose - describes the main objectives of the ordinance, including the reason(s) why the ordinance should be adopted.

Requirement: This section shall establish that the purpose of the ordinance is to promote development patterns that reduce adverse impacts on the environment. The APA model ordinance offers the following as an example for the purpose of the ordinance:

It is the purpose of this ordinance to permit residential clustering development in order to:

1. encourage creative and flexible site design that is sensitive to the land's natural features and adapts to the natural topography;
2. protect environmentally sensitive areas of a development site and permanently preserve open space, natural features, and prime agricultural lands;
3. decrease or minimize nonpoint source pollution impacts by reducing the amount of impervious surfaces in site development;
4. promote cost saving in infrastructure installation and maintenance by such techniques as reducing the distance over which utilities, such as water and sewer lines, need to be extended, or by reducing the width or length of streets; and
5. provide opportunities for social interaction and walking and hiking in open space areas.

C. Definitions - key terms used within the ordinance.

D. Standards - specific details to guide local officers and agencies as they implement and enforce the ordinance.

Requirements (Applicants should provide a description of the standards that relate to the ones below within the municipality's clustering provisions.):

1. Establish qualifying conditions. The ordinance should define the minimum area requirements and number of units required in order to cluster. The ordinance should also specify which utilities should be in place.
2. Contiguous clustering should be mandatory or there should be incentives to encourage clustering, such as density bonuses.
3. **Cluster ordinances should meet one or more of the following standards:**
 - a. Preserve a minimum of 50% of the total land area involved with the development as open space (natural area), for both contiguous and non-contiguous clustering.
 - b. Preserve a minimum of 40% open space if clustering is mandatory for the specified zoning district(s). (*Not applicable to non-contiguous clustering*).
4. All clustering ordinances should specify that sensitive environmental features should be avoided as well as define the critical areas that shall be excluded from open space calculations, where applicable. Development shall be clustered on the least sensitive portion of a site

(except where doing so would necessitate that roadways or utility lines cross sensitive areas.)

5. The ordinance should provide guidance on design possibilities for clustered developments, e.g. Village Center, Rural Hamlet, etc.
 6. The ordinance should provide guidance on how to calculate the allowable number of units. Is there a density multiplier based on the presence of natural features or other constraints to determine Adjusted Tract Area, Gross Tract Area, Open Space, etc?
 7. **The ordinance must outline the process for ensuring the preservation and maintenance of the non-developed lands.** Preserved lands should be protected from future development by a deed restriction, conservation easement, or agricultural easement. Ownership possibilities include giving the municipal government control over those lands, donating them to a non-profit conservation group, or having them managed by a homeowners' association.
- E. Applicability** - describes precisely "who" and "what" the ordinance will govern
- F. Submittal** - sets out the information and plans required of anyone proposing a project or development covered by the ordinance.
- G. Fees and Penalties** – will be specified either as a general condition of the municipality's Land Use Regulations, or, if not, each ordinance should specify: the Fees required of applicants as well as the Penalties that may result from the violation of an ordinance.

What to submit to get credit/ points

In order to earn points, your submission must meet the following standards:

The Cluster Development Ordinance must meet the standards listed in Section II (Ordinance Structure) of the "What to Do section" and be officially adopted prior to your submission for Sustainable Jersey points for this action.

Submit the following documentation to verify the action was completed to the above standards. (Log in to the password protected webpage where you submit your online application for certification to write in the text box and upload documents).

In the text box, please provide a short narrative (300 word max) to summarize what was accomplished and the general steps taken to accomplish it.

1. Upload File 1: Submit the Clustering Ordinance. Provide the link to the ordinance in the web-based codes, a certified copy of the resolution adopting the ordinance, or a copy of the adopted ordinance that is certified by your municipal clerk. Please include all referenced sections to the greatest extent possible.

2. Upload File 2: Provide a description of the standards that relate to those listed in section II (Ordinance Structure) of the “What to Do” section if you have not done so already in the text box.

IMPORTANT NOTES: Please excerpt relevant information from large documents. Please remember that your submissions will be viewable by the public as part of your certified report.

Spotlight: What NJ towns are doing

Several municipalities are currently involved in the Plan Endorsement process and many have adopted these ordinances. As these plans and ordinances become available and approved by the State agencies, they will be available online at the Office of Smart Growth’s website, <http://www.nj.gov/dca/divisions/osg/plan/pe.html>.

Resources

Association of New Jersey Environmental Commissions:
<http://www.anjec.org/html/ordinances.htm>

Delaware Valley Regional Planning Commission:
<http://www.dvrpc.org/Environment/NaturalResourceProtectionTools/ordinances.htm>

Highlands Council (Coming Soon):
<http://www.highlands.state.nj.us/njhighlands/master/conform/#9>

NJDEP Office of Planning and Sustainable Communities:
<http://nj.gov/dep/opsc/envcbp.html#model>

Pinelands Commission: <http://www.nj.gov/pinelands/landuse/>

Stony Brook-Millstone Watershed Association:
<http://www.thewatershed.org/resource-center/reports-and-materials/advocacy/>

Ten Towns Great Swamp: <http://www.tentowns.org/10t/mointro.htm>

U.S. EPA Office of Water: <http://epa.gov/owow/nps/ordinance/>

Example Ordinances:

Cluster Ordinance – Pemberton Township, NJ

http://m.b5z.net/i/u/6106776/f/ORD_31-2009_ZONING_Senior_Cluster_Ordinance.pdf

Cluster Development – Readington Township (Hunterdon) (80% open space required; mandatory clustering in one district)

<http://www.anjec.org/html/Sustainability-ClusterOrdinance.htm>

Model Residential Cluster Development Ordinance

<http://www.planning.org/research/smartgrowth/pdf/section47.pdf>

Noncontiguous Parcel Clustering: A New Technique for Planned Density Transfers. Technical Reference Document #128 by David Kinsey. December 1997. <http://nj.gov/state/planning/docs/parcelclustering120197.pdf>

Salem County's analysis of cluster ordinances within the County*:

http://www.salemcountynj.gov/cmssite/downloads/Farmland_Preservation/Ch4%20Land%20Use%20Planning.pdf

*Note that Mannington Township has a mandatory clustering ordinance