



## Legislation Details (With Text)

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**Type:** Ordinance      **Status:** Adopted  
**File created:** 5/31/2023      **In control:** Economic and Housing Development  
**On agenda:** 6/27/2023      **Final action:** 8/2/2023

**Title:** AN ORDINANCE AMENDING THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, BY AMENDING TITLE XLI, "NEWARK ZONING AND LAND USE REGULATIONS" CHAPTER 21, "INCLUSIONARY ZONING FOR AFFORDABLE HOUSING".

**Sponsors:** Council of the Whole

**Indexes:**

**Code sections:**

| Date      | Ver. | Action By         | Action                            | Result |
|-----------|------|-------------------|-----------------------------------|--------|
| 8/2/2023  | 1    | Municipal Council | Close on Public Hearing and Adopt |        |
| 8/2/2023  | 1    | Municipal Council | Close on Public Hearing and Adopt | Pass   |
| 7/19/2023 | 1    | Municipal Council | Adopt on First Reading            | Pass   |
| 6/27/2023 | 1    | Municipal Council | Advance to First Reading          | Pass   |

**AN ORDINANCE AMENDING THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, BY AMENDING TITLE XLI, "NEWARK ZONING AND LAND USE REGULATIONS" CHAPTER 21, "INCLUSIONARY ZONING FOR AFFORDABLE HOUSING".**

**WHEREAS,** on October 4, 2017, the Municipal Council adopted Ordinance 6PSF-b establishing inclusionary zoning for affordable housing (the "IZO Ordinance"); and

**WHEREAS,** the City of Newark (the "City") wishes to ensure that as the City grows and attracts new market-rate residential development, the City also provides a realistic opportunity to increase affordable housing within the City; and

**WHEREAS,** the City wishes to further ensure a fair and uniform process for the selection of eligible households for affordable housing as required by the IZO Ordinance, with the goal that fifty percent of all available units will be sold or leased to existing income eligible residents of the City; and

**WHEREAS,** the Mayor of the City of Newark and the Municipal Council are desirous of amending the IZO Ordinance; and

**WHEREAS,** N.J.S.A. 40:48-2 authorizes a municipality to make, amend, repeal and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the

municipality and its inhabitants; and

**WHEREAS**, on April 5, 2023, the Municipal Council adopted Resolution 7R2-r, referring a Draft Ordinance Amending Title XLI “Newark Zoning and Land Use Regulations” Chapter 21, “Inclusionary Zoning for Affordable Housing” for formal review, report, and recommendation by the Central Planning Board, as required by N.J.S.A. 40:55d-26 and 64; and

**WHEREAS**, on April 24, 2023, the Central Planning Board issued a Memorialization Resolution finding that the Draft Ordinance is consistent with the purpose and intent of the City of Newark’s 2022 Master Plan and offered recommendations for revisions as shown in Exhibit A, attached hereto.

**NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:**

**Note:** Additions are shown in **bold** and underlined and deletions are shown as ~~strikethrough~~.

**Section 1.** Chapter 41, Inclusionary Zoning For Affordable Housing, § 41:21-1-2, “Definitions” is hereby amended and revised to provide as follows:

ADMINISTRATIVE AGENT

**The entity responsible for the administration of affordable units in accordance with this Chapter, N.J.A.C. 5:91, N.J.A.C. 5:93 and N.J.A.C. 5:80-26.1 et seq., which may include** The Division of Housing and Real Estate Development within the City of Newark Department of Economic and Housing Development, or such other qualified entity, **including without limitation, a private entity, community benefit organization or housing consulting agency, as shall** ~~which may~~ be duly approved by the City from time to time.

RANDOM SELECTION PROCESS

**The** A process by which currently income-eligible households are selected for placement in income-restricted units ~~such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (for example, by lottery).~~ **as set forth in Section 41:21-19, Subsection 6 of this Chapter.**

**Section 2.** Chapter 41, Inclusionary Zoning For Affordable Housing, § 41:21-3, “Standards” is hereby amended and revised to provide as follows:

5. The marketer of income-restricted units created pursuant to this Chapter shall, without unduly delaying occupancy, affirmatively market with best efforts said units ~~to give income eligible Newark residents priority for occupancy of said units.~~ **in accordance with the lottery system set forth in Section 41:21-19, Subsection 6 of this Chapter.**

**Section 3.** Chapter 41, Inclusionary Zoning For Affordable Housing, § 41:21-18, “Tenant and Income Eligibility” is hereby amended and revised to provide as follows:

**4. No applicant or tenant shall be discriminated against on the basis of actual or**

perceived race, religion, national origin, nationality, ancestry, pregnancy or breastfeeding, sex, gender identity or expression, sexual orientation, familial status (defined as having care or custody of a child under age 18 or being pregnant), disability, liability for service in the Armed Forces of the United States, marital status, civil union status, domestic partnership status, criminal background or legal source of income to be used for rental or mortgage payments.

**Section 4.** Chapter 41, Inclusionary Zoning For Affordable Housing, § 41:21-19, “Administrative Agent” is hereby amended and revised to provide as follows:

1. g. Subject to Section 41:21-3, Subsection 5 of this Chapter, Employing a random selection process when referring households for certification to an income restricted unit affordable unit in accordance with the lottery process set forth in Section 41:21-19, Subsection 6 of this Chapter.

s. Providing annual reports to COAH as required; and

t. Such other responsibilities as may be necessary to carry out the provisions of this Chapter.

t. Ensure that the developer has posted all available units on NewarkHousingSearch.org.

u. Compiling, verifying and submitting monthly reports as may be required by the Deputy Mayor/Director of the Department of Economic and Housing Development, including without limitation, a list of income restricted units in each of the developer's developments that are unoccupied and available for purchase or lease; a list of income restricted units in each of the developer's developments that are occupied; and a list of tenant income and rent rolls for each development.

v. At the direction of the Deputy Mayor/Director of the Department of Economic and Housing Development, establish a training program to counsel future applicant households on the Inclusionary Zoning program.

w. Ensure compliance with all applicable Federal, State and City laws related to fair housing rules and that income review, applicant eligibility review, and placement procedures shall not discriminate against any person on the basis of actual or perceived race, religion, national origin, nationality, ancestry, pregnancy or breastfeeding, sex, gender identity or expression, sexual orientation, familial status (defined as having care or custody of a child under age 18 or being pregnant), disability, liability for service in the Armed Forces of the United States, marital status, civil union status, domestic partnership status, criminal background or legal source of income to be used for rental or mortgage payments.

x. Such other activities and responsibilities as may be necessary to carry out the provisions of this Chapter and as may be further delegated by the Deputy Mayor/Director of the Department of Economic and Housing Development.

3. c. The administrative agent shall establish and maintain a ready database of applicant households, which shall include coordinated entry of existing City and County of Essex

**databases**, as a referral source for certifications to **income** restricted units and shall establish written procedures to ensure that selection among applicant households be via the database, and in accordance with a uniformly applied random selection process and all applicable State and Federal laws relating to the confidentiality of applicant records.

4. In the event that the City shall not otherwise appoint one or more administrative agents, Except in the case of income-restricted units created pursuant to this Chapter receiving UHGRP or MONI funding, the City of Newark, Division of Housing Assistance shall serve as the administrative agent for income-restricted units which are created pursuant to this Chapter.

**6. The administrative agent shall establish a lottery system for the selection of eligible applicant households to be referred to the developer for the purchase or lease of an income restricted unit as follows:**

**a. the administrative agent shall randomly select up to ten (10) certified households through a lottery from the database of eligible certified households. The certified households selected shall then be ranked in the following order:**

**(I) certified households residing in the City of Newark, who shall then be ranked by the length of time each has been on the list of applicant households;**

**(II) all other households not residing in the City of Newark, who shall then be ranked by the length of time each has been on the list of applicant households.**

**b. No later than seven (7) days after a lottery is held, the administrative agent shall provide to the developer a written list of the households selected pursuant to the lottery.**

**c. No later than seven (7) days after a lottery is held, the administrative agent shall provide a written notice to each of the households selected in the lottery of their selection and shall provide to each household the address, unit type, and maximum rent or purchase price of the income restricted unit for which the lottery was held and the means by which the household may provide the administrative agent and the developer the information required herein.**

**d. Within ten (10) days after the date of the notice set forth in Subsection 6 c. of this Chapter, a household shall inform the administrative agent and the developer of their interest in purchasing or leasing an income restricted unit.**

**e. The developer shall market an income restricted unit to each of the households selected that have provided the notice required pursuant to Section 41:21-19, Subsection 6 d. of this Chapter, including, but not limited to, showings and providing other marketing information.**

**f. The highest ranked household to confirm interest to the administrative agent and the developer shall have an exclusivity period of thirty (30) days after the date of providing such notice of interest to purchase or lease the income restricted unit.**

**g. If the highest ranked household that has confirmed interest in the income restricted unit declines or fails to purchase or lease the income restricted unit during the exclusivity period, the other households selected in the lottery that have confirmed their interest shall be given the opportunity to purchase or lease the income restricted unit based on their ranking in the lottery selection. No such household will be given an exclusivity period.**

**h. If none of the households selected through a lottery purchase or lease the income restricted unit, the administrative agent shall continue to hold lotteries pursuant to the procedures set forth herein until a household purchases or leases the income restricted unit.**

**i. If more than ninety (90) days have passed since the administrative agent provided notice to the developer pursuant to Section 41:21-19, Subsection b of this Chapter and the income restricted unit has not been sold or leased, the developer may sell or lease the income restricted unit to a household that has not been selected pursuant to a lottery, provided however, such household must be in compliance with the income restrictions set forth in this Chapter.**

**Section 5.** Chapter 41, Inclusionary Zoning For Affordable Housing, § 41:21-20, “Affirmative Marketing” is hereby amended and revised to provide as follows:

5. e. A description of the random selection method **as set forth in Section 41:21-19, Subsection 6 of this Chapter**, that will be used to select occupants of affordable housing; and

7. **d. Ensure that the developer has posted all available units on NewarkHousingSearch.org.**

**Section 6.** Chapter 41, Inclusionary Zoning For Affordable Housing, § 41:21-21, “Household Certification and Referral; Related Project Information” is hereby amended and revised to provide as follows:

12. ~~Section 41:21-3, Subsection 5 of this Chapter, the administrative agent shall employ a random selection process when referring certified households for income-restricted units which are created pursuant to this chapter:~~

**Section 7.** Chapter 41, Inclusionary Zoning For Affordable Housing, is hereby amended and revised to establish a new section as follows:

### **Section 22. Communication**

**Any and all communication and notices as required pursuant to this Chapter may also be in the form of electronic or database communications where available and/or appropriate.**

**Section 8.** Chapter 41, Inclusionary Zoning For Affordable Housing, is hereby amended and revised such that all remaining Sections after the above new Section 22 shall be appropriately re-numbered.

**Section 9.** All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

**Section 10.** The Provisions of this Ordinance are severable. To the extent any clause, phrase, sentence, paragraph or provision of this Ordinance shall be declared invalid, illegal or unconstitutional, such clause, phrase, sentence, paragraph or provision shall be served and shall be inoperative and the remainder of this ordinance shall remain operative and in full force and effect.

**Section 11. Codification.** This Ordinance shall be a part of the Code of the City of Newark as though codified and fully set forth therein. The City Clerk shall have this Ordinance codified and incorporated in the official copies of the Code. The City Clerk and the Corporation Counsel are authorized and directed to change any Chapter, Article and/or Section number of the Code of the City of Newark in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.

**Section 12.** This Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

### **STATEMENT**

This Ordinance amends Title XLI, Zoning and Land Use Regulations, of the Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented, Chapter 21, "Inclusionary Zoning For Affordable Housing.