



Legislation Text

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AN ORDINANCE AMENDING TITLE II, ADMINISTRATION, CHAPTER 10, DEPARTMENT OF ECONOMIC AND HOUSING DEVELOPMENT, BY CREATING SECTION 9, AFFORDABLE HOUSING DEED RESTRICTION, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, REQUIRING AN AFFORDABLE HOUSING DEED RESTRICTION TO BE RECORDED UPON THE SALE OF UP TO FIFTY PERCENT OF THE CITY'S PROPERTY STOCK, ALSO ALLOWING CERTIFIED NON-PROFIT HOUSING DEVELOPERS A RIGHT OF FIRST REFUSAL TO PURCHASE CITY-OWNED PROPERTY.

WHEREAS, the City of Newark (the "City") has determined that the continuance of a shortage of affordable housing to persons of low income is harmful to the health, prosperity, economic stability and general welfare of the City; and

WHEREAS, due to the shortage of affordable housing and the recent increase in home values over the past few years it has resulted in existing residents being vulnerable to increasing rents and displacement; and

WHEREAS, the City finds that the proximity to other high-cost areas and the pending development throughout the City, along with future projects in the City, have the potential to attract increased investment and development in the community, creating increases in housing costs, loss of housing affordability and displacement of low and moderate income residents; and

WHEREAS, the City finds that these circumstances require proactive and meaningful action to reduce the displacement of vulnerable Newark households, while continuing to promote affordable housing for current and future residents of the City; and

WHEREAS, the City finds that gentrification and displacement exacerbate historic patterns of racial and economic segregation, deepen concentrations of poverty and wealth, and widen disparities in access to good schools, jobs, healthcare and other amenities; and

WHEREAS, the City's inventory of Property, as defined herein, is a key resource, which can be leveraged to ensure quality affordable housing for current and future residents of the City; and

WHEREAS, the primary objectives of this Ordinance are as follows:

1. To promote affordable housing in the City of Newark; and
2. To provide Property to Newark residents that meet the area median income to assist current and long-term City of Newark residents vulnerable to neighborhood economic and

housing market changes; and

3. To establish Affordable Housing Restriction requirements for the disposition and development of City owned Property to ensure that all residents have access to Affordable Housing that will remain affordable for a period of thirty (30) years after being purchased; and
4. To encourage the economic participation of local residents and businesses in the development of the City of Newark, particularly with respect to the development of City-owned Property that will be made available to Newark residents that meet the area median income and that will remain affordable for a period of thirty (30) years after being purchased; and
5. To lay the groundwork for equitable growth and development for all range of incomes; and
6. To afford Certified Non-Profit Housing Developers, as defined herein, a right of first refusal to purchase City-owned Property pursuant to the terms and conditions set forth herein.

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.

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

SECTION 1. The foregoing whereas clause is incorporated herein by reference and made a part hereof.

SECTION 2. Title II, Administration, Chapter 10, Department of Economic and Housing Development, is amended to add the following new Subsection 9 entitled Affordable Housing Deed Restriction included on the sale of up to fifty percent (50%) of Property and affording certified non-profit housing developers a right of first refusal to purchase city-owned Property.

§ 2:10-9 AFFORDABLE HOUSING DEED RESTRICTION INCLUDED ON SALE OF UP TO FIFTY PERCENT OF THE CITY'S PROPERTY STOCK INCLUDING VACANT LAND.

§ 2:10-9.1 Purpose and Effect.

- a. Purpose. It is the purpose of this chapter to create and promote the preservation of Affordable Housing throughout the City of Newark by imposing a deed restriction on the sale

of City-Owned Property in any given calendar year.

- b. Effect. As of the Effective Date of this Ordinance, this Ordinance shall require that up to fifty percent (50%) of City-owned Property, as defined herein, sold by the City of Newark, subject to Municipal Council approval, in any given calendar year shall remain Affordable for use and occupancy by households earning 60% or less of AMI through the imposition of an Affordable Housing Deed Restriction that will remain in effect for a period of thirty (30) years. Of the properties sold pursuant to this Ordinance, Certified Non-Profit Housing Developers, as defined herein, shall be afforded a right of first refusal to purchase said properties pursuant to the terms and conditions set forth herein.

§ 2:10-9.2 DEFINITIONS

For the purposes of this title, the following words and phrases shall have the following meanings:

“Affordable Housing Restriction (AHR) Acknowledgment” means that Deed Restriction document, that will remain in effect for a period of affordability of thirty (30) years, executed and recorded by the Purchaser of an Affordable Housing Property, or an Affordable Housing Lot sold by the City in which the Purchaser(s) acknowledges and agrees to comply with the AHR.

“Affordable” means sales price less than or equal to the amount at which total monthly housing costs, as specified in the rules, would total not more than 30% of household income for a household whose income is the maximum allowable for an eligible household.

“Affordable Housing” means the Affordable Housing Property that is restricted by the AHR for occupancy and affordable to households with incomes that are at or below 60% of Area Median Income by family size as established by the United States Department of Housing and Urban Development (HUD).

“Affordable Housing Property (AHP)” means all single and multiple family dwelling units, including all improvements thereon, which are subject to this Ordinance.

“Affordable Housing Lot (AHL)” means any or all unimproved properties, referred to as lots, in the City which are subject to this Ordinance. Any property constructed on an Affordable Housing Lot shall be considered an Affordable Housing Property.

“Area Median Income (AMI)” means the median gross household income for the City of Newark as calculated and adjusted for household size on an annual basis by HUD.

“City” means the City of Newark, New Jersey and hereinafter referred to as "City", "City of Newark" or "Municipality".

“Certified Non-Profit Housing Developers” means those non-profit organizations that meet the following criteria: (1) The organization is a bona fide nonprofit as evidenced by the fact that it is exempt from federal income tax under 26 USC § 501(c)(3); (2) The organization has demonstrated an ongoing commitment to the provision of affordable housing for low and moderate income City residents, and to preventing the displacement of such residents; (3) The organization has demonstrated an ongoing commitment to community engagement as evidenced by relationships with

neighborhood-based organizations; and (4) The organization has demonstrated the capacity (including, but not limited to, the legal and financial capacity) to effectively acquire and manage residential real property at multiple locations in the City.

The City shall place each Certified Non-Profit Housing Developer who meets with above criteria on a Certified Non-Profit Housing Developers List, which will remain in effect for one calendar year. The City shall solicit new applications for Certified Nonprofit status at least once each calendar year, at which time new and existing Certified Nonprofits shall be eligible to apply for a certification and placed on the City's Certified Non-Profit Housing Developers List for that respective calendar year.

"Certified Non-Profit Housing Developers List" means a list of Certified Nonprofits published on the City of Newark's website and made available upon request. The list shall include contact information for each Certified Nonprofit including but not limited to the name of the Certified Nonprofit, a mailing address, an email address, and a telephone number.

"Deed Restriction" means the restriction document recorded against the Affordable Housing Property to apply the AHR and ensure that the Property is sold to purchasers who meet the Area Median Income and who agree to comply with the AHR to ensure that the Property remains Affordable for a period of thirty (30) years in compliance with this Ordinance. The Deed Restriction shall incorporate, as an Exhibit, an Option to Purchase, in order to clearly provide for procedures whereby the City may acquire the AHP in the event of a foreclosure or a deed in lieu of foreclosure.

"Housing and Urban Development (HUD)" means the United States Department of Housing and Urban Development.

"In Lieu Payment" means a payment made by a purchaser of Property in lieu of complying with the affordability requirements of this Ordinance which shall be deposited into the City's Affordable Housing Trust Fund prior to the closing on the sale of the Property.

"Property" shall mean the City-owned Affordable Housing Property and/or Affordable Housing Lots which are subject to this Ordinance, subject to the AHR.

"Public Auction" means any auction to sell real property as authorized by the Municipal Council pursuant to N.J.S. 40A:12-13.

"Purchaser" means a person(s), firm, partnership, corporation, trust, organization, non-profit, limited liability company or other entity, or its successors or assigns who enters into a purchase contract with the City of Newark to purchase Property, approved for sale by the Municipal Council, pursuant to the terms of this Ordinance.

"Sale or Sell" means an act by which City of Newark Municipal Council conveying, transferring or disposing of City-owned property by deed or otherwise, whether through a single transaction or a series of transactions, to owners that meet the Area Median Income and agree to keep the Property Affordable for a period of thirty (30) years.

§ 2:10-9.3. Adoption of Affordable Housing Restriction.

As of the Effective Date of this Ordinance, the following City of Newark Affordable Housing

Restriction (the “AHR”) shall be imposed on up to 50% of the Property stock sold by the City of Newark to a Purchaser in any given calendar year in which this Ordinance remains in effect.

A. Affordable Housing Restriction (AHR) on Ownership, Use and Occupancy

The AHR, as defined by this Ordinance constitutes a covenant that runs thirty (30) years from the date of recordation with the title to the Property as a burden thereon and shall be binding on the Owner, and on the heirs, personal representatives, assigns, lessees and licensees and any transferee of the Owner. The duration of this Deed Restriction and covenant shall extend for a period of thirty (30) years. This Deed Restriction covered under the Ordinance shall be administered by the City of Newark Department Economic and Housing Development, or its designee, and shall be enforceable by any appropriate legal or equitable action including but not limited to specific performance, injunction, abatement or eviction of non-complying Owners, users or occupants, or such other remedies and penalties as may be provided under New Jersey Law or the Ordinances of the City of Newark.

B. Limitation on Amendments to Affordable Housing Restriction. Although this Ordinance may be amended from time to time, the AHR recorded against a particular Affordable Housing Property or Affordable Housing Lot may not be amended without the consent of the Owner and the approval of the City of Newark Municipal Council. Subsequent amendments to this Ordinance that are less restrictive than those in effect at the time when the AHR was recorded against a particular Affordable Housing Property or Affordable Housing Lot shall apply to such Affordable Housing. Subsequent amendments to this Ordinance that are more restrictive than those in effect at the time when the AHR was recorded against a particular Affordable Housing Property or Affordable Housing Lot shall not be applied against the Affordable Housing without the written consent of the then Owner, and upon such consent shall be recorded as an amendment to the AHR for the subject Affordable Housing Property or Affordable Housing Lot.

C. Transfers of Property Should an Owner who purchased a Property, pursuant to the terms of this Ordinance, desire to sell or transfer ownership or control of the Property, the Owner must notify the City’s Department of Economic and Housing Development in writing and receive express prior written approval of the transfer of ownership or control of the Property and the proposed new Owner. Upon approval by the City, an agreement by and between the City and the new Owner will be executed to bind the new Owner for the remainder of the Affordability Period.

§ 2:10-9.4. Adoption of Rules and Regulations Governing Properties Subject to Affordable Housing Restriction.

A. Deed Restriction

1. The Purchaser of any Affordable Housing Property that is subject to this Ordinance must execute and deliver an original fully executed copy of a Deed Restriction on the City of Newark’s standard form at the time of closing on the sale of the Affordable Housing Unit.

The Deed Restriction and any amendments thereto must be recorded in the property records of Essex County Register of Deeds and Mortgages. A Purchaser of Affordable Housing Property will not receive a Certification of Occupancy (CO) and/or a Certificate of Code Compliance (CCO), until the City has received a fully executed copy of a Deed Restriction.

2. The Purchaser of any Affordable Housing Lot that is subject to this Ordinance must execute and deliver an original fully executed copy of a Deed Restriction on the City of Newark's standard form prior to issuance of a building permit for the construction of a dwelling unit on the Affordable Housing Lot. Any dwelling unit constructed on an Affordable Housing Lot shall be deemed an Affordable Housing Property and subject to all the requirements of an Affordable Housing Property. The Deed Restriction and any amendments thereto must be recorded in the property records of Essex County Register of Deeds and Mortgages.
3. For any developments that have contractually agreed to abide by this Ordinance, the developer or owner of such property shall record a Deed Restriction on the City of Newark's standard form in accordance with the conditions and restrictions set forth in the contractual agreement between the developer/owner and the City of Newark.
4. A purchaser of any Affordable Housing Property and/or any Affordable Housing Lot that is subject to this Ordinance shall not transfer the Affordable Housing Property and/or any Affordable Housing Lot to subsequent purchasers without the approval of the Newark Municipal Council. If the sale is approved by the Newark Municipal Council, subsequent purchasers of any Affordable Housing Property and/or any Affordable Housing Lot must execute an Acknowledgment of Deed Restriction prior to closing the purchase and recorded in the property records of Essex County Register of Deeds and Mortgages.
5. The Deed Restriction shall contain a provision which requires the Deed Restriction to be canceled by the City of Newark in the event of a foreclosure by a financial institution holding a first position purchase money deed of trust on the Affordable Housing Property.
6. An Option to Purchase shall be granted by all lenders to the City of Newark to redeem the Affordable Housing Property in the event of default by purchasing the Property from the holder of the trustee's deed at the redemption price plus reasonable costs of the holder. If the City of Newark does not exercise this Option within 30 days after issuance of the Trustee's Deed, the Deed Restriction shall be canceled by the City of Newark.

§ 2:10-9.5 In Lieu of Payment.

- A.** A Purchaser of property under this Ordinance may, with the approval of the Office of City Planning, make a voluntary cash payment into the City of Newark's Affordable Housing Trust

Fund in lieu of having a Deed Restriction being placed on property sold by the City under this Ordinance.

- B. The amount of the payment-in-lieu figure is \$180,000 per Affordable Housing Property.
- C. The amount of the payment-in-lieu figure is \$180,000 per Affordable Lot
- D. The Municipal Council, in consultation with the City of Newark, Department of Economic and Housing Development, should review this figure every five years.
- E. The Office of City Planning is authorized to approve voluntary cash payment-in-lieu only upon written findings, supported by the record, that such a contribution will further the housing policies of the City of Newark more than a Deed Restriction being placed on property sold by the City.
- F. The opportunity to make a voluntary payment in lieu of constructing income-restricted units is not intended to be and should not be construed as a right available to Purchasers of City-owned Property. The policy of this Chapter favors a Deed Restriction being placed on property sold by the City.
- G. The Office of City Planning approval of any payment-in-lieu shall be conditioned upon the Purchaser entering into an agreement that details the manner in which the payment-in-lieu commitment will be fulfilled.
- H. A Purchaser of City-owned property will not receive a Certification of Occupancy (CO) and/or a Certificate of Code Compliance (CCO), until the City has received the agreed upon payment in lieu of the Deed Restriction.
- I. 10% of the voluntary payment in lieu of construction acquired shall be applied or expended within the ward where the Property being sold is located. No moratorium or suspension of this allocation requirement may be authorized, except upon Resolution adopted by Municipal Council.
- J. The Municipal Council, at its discretion and by Ordinance, has the authority to make changes to the amount of the payment-in-lieu on a specific development project.

§ 2:10-9.6 Right of First Refusal

A. Right of Interest to Participate in Potential Purchase of Property.

1. When the City intends to sell Property, before going to market, the City shall send notice, pursuant to § 2:10-9.6(A)(2), to all Certified Non-Profit Housing Developers included on the City's Certified Non-Profit Housing Developers List of the City's intent to sell.
2. Notice Requirement. The City shall comply with the following notice requirements when selling Property:
 - a. Provide written e-mail notice to all Certified Non-Profits included on the Certified Non-

Profit Housing Developers List by 11:59 P.M. on the same date.

- b. All notices shall include the following minimal requirements:
 - i. a statement that the City intends to sell the Property;
 - ii. the address and block and lot of the Property the City intends to sell; and
 - iii. the minimum sales price for the Property the City intends to sell.

- 3. Upon receipt of a notice, all interested Certified Non-Profit Housing Developers shall, by no later than 11:59 p.m. on the fifth full calendar day from the date the City notified the Certified Non-Profit Housing Developers of its intent to sell, notify the City, via e-mail, as to whether or not they wish to exercise their interest in a right of first refusal on the property, as outlined in § 2:10-9.7.
- 4. If the City does not receive any notice of interest to purchase Property from any Certified Non-Profit Housing Developer within five calendar days as set forth herein, the City may immediately proceed to offer the property for sale to, and solicit offers of purchase from, third-party purchasers.

B. Right of First Refusal

- 1. Before City may sell a Property, the City shall provide every Certified Non-Profit Housing Developer who previously provided a statement of interest to acquire the Property pursuant to § 2:10-9.6, an opportunity to purchase such Property at a price and terms that represent a bona fide offer of sale.
 - a. Upon receipt of a bona fide purchase offer for a Property, the City shall submit to each Certified Non-Profit Housing Developer(s), who previously provided a statement of interest to acquire the Property pursuant to § 2:10-9.6, a copy of the bona fide purchase offer within two (2) days of receipt of such purchase offer. The bonified offer shall include (1) The minimum asking price and terms of the sale received from a third-party purchaser; and (2) a statement as to whether a purchase contract with a third-party purchaser exists for the sale of the Property.
 - b. The Certified Non-Profit Housing Developer(s) shall have five (5) days to present their highest and best offer price, upon substantially similar terms and conditions as the third-party bona fide offer.
 - c. The City shall choose the highest and best offer price received from interested Non-Profit Housing Developer(s). If the terms of the offer to purchase from the Certified Non-Profit Housing Developers are not substantially similar to the offer to purchase from a third-party, the City shall notify the Certified Non-Profit Housing Developers of the rejection of the offer on such a basis. The City shall have the obligation to define the reasoning as to the rejection, setting forth all reasons and terms in which the offer was not substantially similar.
 - d. If no offers are received from Certified Non-Profit Housing Developer(s) the City shall sell the property to the third-party purchaser pursuant to the terms and conditions of the

bona fide offer of sale.

§ 2:10-9.7 Transfers Without City Approval. If it is determined that the Purchaser of any Property transferred the Property to a third party prior to the thirty (30) year covenant restriction without the City's approval; the City can elect to enforce one of the following repercussions, which shall be clearly set forth in the Deed Restriction:

- a. The property may Revert back to the City.
 - i. If the property is Reverted back to the City by the Purchaser's failure to comply with this Ordinance and/or the Deed restriction; the Purchaser shall be liable for all fees, payments, and any other monetary encumbrances inflicted on the City due to Purchaser's failure to comply with this Ordinance and/or breach of the Deed Restriction;

OR

- b. The City shall be entitled to the difference in Fair Market Value at the time the property was sold minus the amount the City sold it to the Purchaser.
 - i. The Purchaser shall be liable for all fees, payments, and any other monetary encumbrances inflicted on the City due to the Purchaser's failure to comply with this Ordinance and/or breach of the Deed restriction.

§ 2:10-9.8 Exceptions.

The following shall be exempt from the provisions of this Ordinance:

- A. City-owned Property sold to Newark Residents:
 1. Property being transferred from the City to Newark residents will not require an affordable housing deed restriction, so long as the transferee owns and occupies the Property for five (5) consecutive years after the closing and transfer of said Property to the transferee from the City.
 - a. Property will have a deed restriction detailing that transferee must occupy the property for a minimum of five (5) consecutive years after the closing and transfer of Property to the transferee from the City.
 - b. If it is determined that the transferee did not occupy the property for a total of five (5) consecutive years after the closing and transfer of Property or sold the Property prior to five (5) year minimum set forth above, the property shall automatically revert back to the City.
 - i. If the property is reverted back to the City by the transferee's failure to comply

with this Ordinance and/or the Deed restriction, the transferee shall be liable for all fees, payments, and any other monetary encumbrance inflicted on the City due to the transferee's breach of this Ordinance and/or Deed restriction.

2. The Residents must comply with the following:
 - a. Shall be Low income to moderate income, as defined in Section 3(b)(2) of the Housing Act of 1937, which is determined annually by HUD.
 - b. Must have lived in the City for a consecutive five (5) years immediately preceding the transfer of the Property.

B. City-owned Property that is sold through a Public Auction.

§ 2:10-9.9 Landbank. All provisions in this chapter will apply to those properties transferred by the City of Newark Municipal Council to the City's Landbank, excluding those properties transferred prior to the effective date of this Ordinance.

§ 2:10-9.10 Inconsistency of the ordinances; repealer.

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of their inconsistencies only. This ordinance shall take effect twenty (20) days after passage and publication, as required by law.

§ 2:10-9.11 Partial invalidity of ordinance; severability.

Should any section, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this ordinance shall not be affected thereby and shall remain in full force and effect, and to that end the provisions of this ordinance are hereby declared to be severable.

Section 3. This Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

An Ordinance amending Title II, Administration, Chapter 10, Department of Economic and Housing Development, by creating Section 9 requiring an Affordable Housing Deed Restriction to be recorded on the sale of up to fifty percent (50%) of property and affording certified non-profit housing developers a right of first refusal to purchase City-owned property.