



Legislation Details (With Text)

File #: 22-0681 **Version:** 1 **Name:** Ordinance: Inclusionary Zoning for Affordable Housing
Type: Ordinance **Status:** Adopted
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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".

Deferred 6PSF-I 060222
Amended 6PSF-f (s) 062122
Formerly 6PSF-a 071322 adopted as 6F-b 071322

Sponsors: Council of the Whole

Indexes:

Code sections:

Date	Ver.	Action By	Action	Result
7/26/2022	1	Municipal Council	Close on Public Hearing and Adopt	Pass
7/13/2022	1	Municipal Council	Adopt on First Reading	Pass
6/21/2022	1	Municipal Council	Motion to amend	Pass
6/21/2022	1	Municipal Council	maintained on public hearing and adopted as amended	Pass
6/2/2022	1	Municipal Council	maintained on public hearing and deferred to Special meeting	Pass
5/24/2022	1	Municipal Council	Advance and Adopt on First Reading as 6F-	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".

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

WHEREAS, there exists a significant shortage of affordable housing within the City of Newark; and

WHEREAS, in February 2021, the Rutgers Law School Center for Law, Inequality and Metropolitan Equity, produced a report entitled "HOMES BEYOND REACH: An Assessment and Gap Analysis of Newark's Affordable Rental Stock", which found that: (a) Newark has almost 40,000

households, who earn less than \$30,000, but less than 20,000 low-rent units that are affordable to them; (b) about 60% percent of Newark households are rent burdened (spending more than a third of their incomes for shelter) and about a third pay at least half their incomes to live in the City; (c) roughly half of Newark's households compete for less than a third of Newark's rental units that are affordable; and (d) the City needs an additional 16,234 units renting for about \$750 per month to meet residents' existing needs; and

WHEREAS, the City of Newark 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; and

WHEREAS, the Mayor of the City of Newark and the Municipal Council are desirous of amending the 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 March 8, 2022, the Municipal Council adopted Resolution 7R2-b(s), 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 4, 2022, the Central Planning Board approved a Resolution finding that the Draft Ordinance is consistent with the Municipal Land Use Law (MLUL) 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, § 41:21-2, "Mandatory Set-Aside," is hereby amended and revised to provide as follows:

- a. All new Residential and/or Mix Use Development having thirty (30) or more units and all Substantially Rehabilitated residential development having forty (40) or more units for which the Zoning Board of Adjustment grants any variance pursuant to N.J.S.A. 40:55D-70d(1), d(5) or d(6), shall set aside twenty percent (20%) of the total number of new constructed and substantially rehabilitated residential units as income-restricted units, in accordance with the Standards in Section 3 of this Ordinance. Of that 20%, each new and substantially rehabilitated residential development must provide, at minimum, the following:
 - i. ~~5% income-restricted units up to 40% of the AMI;~~
 - ii. ~~5% income-restricted units up to 60% of the AMI; and~~
 - iii. ~~10% income-restricted units up to 80% of the AMI.~~

~~b. All new Residential and/or Mixed Use Developments having thirty (30) or more units and Substantially Rehabilitated residential and mixed use residential development having forty (40) or more units for which the Planning Board grants any variance shall set aside twenty percent (20%) of the total number of newly constructed and substantially rehabilitated residential units as income-restricted units, in accordance with the standards in section 3 of this Ordinance. Of that 20%, each new and/or substantially rehabilitated residential and/or mixed-use residential development must provide, at minimum, the following:~~

- ~~i. 5% income-restricted units at 40% of the AMI;~~
- ~~ii. 5% income-restricted units at 60% of the AMI; and~~
- ~~iii. 10% income-restricted units at 80% of the AMI.~~

~~c. In accordance with Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-7b., Residential and/or Mixed Use Developments having thirty (30) or more units and all substantially rehabilitated residential and mixed used residential development having forty (40) or more units (which is authorized by either:~~

~~1. a redevelopment plan that is adopted after the effective date of this Chapter, and that changes the zoning for the subject property from non-residential to residential or increases the permitted residential floor area ratio density, or height, on the subject property; or~~

~~2. an existing redevelopment plan that is amended after the effective date of this Chapter and that changes the zoning for the subject property from non-residential to residential or increases the permitted residential floor area ratio, density, or height on the subject property, shall set aside twenty percent (20%) of the total number of new constructed residential units as income-restricted units.~~

~~Of that 20%, each new and/or substantially rehabilitated residential and/or mixed-use residential development must provide, at minimum, the following:~~

- ~~i. 5% income-restricted units up to 40% of the AMI;~~
- ~~ii. 5% income-restricted units up to 60% of the AMI; and~~
- ~~iii. 10% income-restricted units up to 80% of the AMI.~~

~~d. All City Owned Residential Properties and/ or Mix~~

~~Use sold in a Redevelopment Agreement having thirty (30) or more units and all Substantially Rehabilitated residential and/ or Mix Use sold in a Redevelopment Agreement having forty (40) or more units sold shall set aside twenty percent (20%)~~

of the units as income-restricted units, in accordance with the standards in section 3 of this Ordinance. Of that 20%, each new and/or substantially rehabilitated residential and/or mixed-use residential development must provide, at minimum, the following:

- ~~i. 5% income-restricted units up to 40% of the AMI;~~
- ~~ii. 5% income-restricted units up to 60% of the AMI; and~~
- ~~iii. 10% income-restricted units up to 80% of the AMI.~~

- e. All development in a designated MX-3 zone having Residential and/or Mixed Use Developments having thirty (30) or more units and all Substantially Rehabilitated residential and/ or Mix Use sold in a Redevelopment Agreement having forty (40) or more units sold shall set aside twenty percent (20%) of the units as income-restricted units, in accordance with the standards in section 3 of this Ordinance. Of that 20%, each new and/or substantially rehabilitated residential and/or mixed-use residential development must provide, at minimum, the following:

- ~~i. 5% income-restricted units up to 40% of the AMI;~~
- ~~ii. 5% income-restricted units up to 60% of the AMI; and~~
- ~~iii. 10% income-restricted units up to 80% of the AMI.~~

a. All new Residential, Mix-Use Development or Substantial Rehabilitation having fifteen (15) or more Residential units shall set aside twenty percent (20%) of the total number of Residential units as Income-Restricted Units in accordance with the Standards set forth in Section 3 of this Ordinance. Of that 20% (i) five percent (5%) shall be Income-Restricted Units not exceeding forty percent (40%) of the AMI, (ii) five percent (5%) shall be Income-Restricted Units not exceeding sixty percent (60%) of the AMI and (iii) ten percent (10%) shall be Income-Restricted Units not exceeding eighty percent (80%) of the AMI.

b. The following compensatory benefits are provided to facilitate the inclusion of affordable housing:

(i) Density bonus. Except where a density variance is granted, as set forth in Subsection (b)(ii) of this section, a fifteen percent (15%) residential density bonus shall be permitted for all Projects that comply with this Ordinance. Where the calculated density bonus results in a fraction, the density bonus shall be rounded up to the next whole unit.

(ii) Density variances. A compensatory benefit will be deemed to have been awarded, and the density bonus referred to in Subsection (b)(i) above will not apply where the City's Zoning Board of Adjustment approves an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5), (known as a density variance).

(iii) Relaxation of zoning standards. In all cases, the City's approving land use board shall consider the granting of variances and waivers including but not limited to

reduced setbacks, reduced coverage, increased floor area, increased building heights and/or additional stories so as to accommodate the increased number of units and to reasonably result in an opportunity to provide affordable housing.

(iv) Additional incentives. Additional incentives to subsidize the creation of affordable housing may be included in a developer's or redeveloper's agreement at the discretion of the City.

(v) Further incentives. Further incentives including expedited board approval and permit processing, partial or full waivers of planning fees, permitting fees, ten (10) to twenty (20) percent reduction in parking space requirement as required by the city-wide or redevelopment plan regulations and parking study waiver for projects with affordable housing component.

Section 2. Chapter 41, Inclusionary Zoning For Affordable Housing, § 41:21-4, "Exemptions," is hereby amended and revised to provide as follows:

§ 41:21-4 Exemptions. The following shall be exempt from the provisions of this Chapter:

a. All new Residential, and/or Mix-Use Development or Substantial Rehabilitation having less than fifteen (15) Residential units units and all Substantially Rehabilitated residential development over forty (40) total units that have 21% or more affordable development as income restricted units. Any project that seeks amended site plan application, which increases the number of units to fifteen (15) and over should not be exempt from complying with this ordinance.

b. Any developers subject this chapter that is Shovel Ready by January 1, 2018 new Residential, Mix-Use Development or Substantial Rehabilitation undertaken by the Newark City Housing Authority or a non-profit entity in which at least fifty percent (50%) of the total Residential units in the development are for Low or Moderate Income Housing.

c. Projects that have submitted a complete development application in accordance with N.J.S.A. 40:55D-10.5 prior to the effectiveness of this Ordinance, unless the developer seeks a substantial change, modification or amendment.

Section 3. Chapter 41, Inclusionary Zoning For Affordable Housing, § 41-21:5, "Payment In Lieu of Constructing or Substantially Rehabilitating Income-Restricted Units," subsection (b) is hereby amended and revised to provide as follows:

b. The amount of the payment-in-lieu figure is **\$180,000.00** based on the Developer satisfying the mandatory number of income required units related to the corresponding percentage AMI tier as stated in Section 2 of this ordinance. The amount of payment in lieu per unit, is as follows::

i. ~~Income restricted units up to 40% AMI -- \$50,000.00 per unit~~

ii. ~~Income restricted units up to 60% AMI – \$20,000.00 per unit~~

iii. ~~Income restricted units up to 80% AMI – \$15,000.00 or unit~~

The Municipal Council, in consultation with the City of Newark, Department of Economic and Housing Development, should review this construction cost figure every five (5) years.

Section 4. Chapter 41, Inclusionary Zoning For Affordable Housing, § 41:21-22, Inclusionary Zoning For Affordable Housing, is hereby amended and revised to provide as follows:

f. Each development subject to this Chapter shall pay a two-thousand-dollar (\$2,000) fee to the City of Newark to cover the administrative costs associated with the administration and enforcement hereof. The Municipal Council, in consultation with the City of Newark, Department of Economic and Housing Development, should appoint staff to oversee inclusionary zoning ordinance compliance from board approval to permit and/or certificate of occupancy. Once inclusionary units are completed, monitoring and stewardship of rental units and especially homeownership units by dedicated staff on an ongoing basis to ensure that units remain affordable and that the program is meeting its stated goals is crucial to the success of the ordinance. In addition, the Municipal Council, in consultation with the City of Newark, Department of Economic and Housing Development, should appoint staff for ongoing program administration.

Section 5. All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

Section 6. 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 7. This Ordinance shall take effect on October 1, 2022.

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.”