

**..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”.**

**..body**

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

**WHEREAS**, the Mayor 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.

**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:**

Delete:

- ~~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.~~

~~e. 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.~~

Add:

**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.

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 ~~and all Substantially Rehabilitated residential development over forty (40) total units that have 21% or more affordable development as income restricted units.~~

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~~

**Section 4. Chapter 41, Inclusionary Zoning For Affordable Housing, § 4:21-10, “Control Periods for Income-Restricted Ownership Units,” subsection (a)** is hereby amended and revised to provide as follows:

a. Each income-restricted ownership unit shall remain subject to the requirements of this chapter for a period of ~~30~~ **fifty (50)** years; provided, however, that:

1. Any unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, shall have its control period governed by said grant of substantive certification, judgment or grant agreement or contract.

**Section 5. Chapter 41, Inclusionary Zoning For Affordable Housing, § 41:21-16, “Control Periods for Income-Restricted Ownership Units,” subsection (a)** is hereby amended and revised to provide as follows:

a. Each income-restricted rental unit created pursuant to this Chapter shall remain subject to the requirements of this Chapter for a period of ~~30~~ **fifty (50)** years; provided, however, that:

1. Any unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, shall have its control period governed by said grant of substantive certification, judgment or grant agreement or contract.

**Section 6. 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.**

**Section 7.** All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

**Section 8.** 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 9.** 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"