



**BOROUGH OF CALDWELL
NEW JERSEY**

ORDINANCE NO. 1399-21

AN ORDINANCE ADDING SECTION 31 TO CHAPTER 250 (ZONING), BOROUGH OF CALDWELL CODE, WHICH WILL BE ENTITLED “AFFORDABLE HOUSING MANDATORY SET-ASIDE”

Recommended for approval by:

Approved as to form and legality by:

Thomas Banker, Administrator

Title:

BE IT ORDAINED by the Borough Council of the Borough of Caldwell, County of Essex, State of New Jersey, as follows:

Section 1. Section 31 of Chapter 250 (Zoning) of the Code of the Borough of Caldwell shall add and include a new article entitled “Affordable Housing Requirements,” which is hereby created and established to read as follows:

Section 31: Affordable Housing Requirements

_____ Affordable Housing Mandatory Set-Aside

§_____ **Purpose and Scope**

A. Purpose

This section is intended to ensure that any site that benefits from a rezoning, variance or redevelopment plan approved by the Borough or the Borough Planning/Zoning Board that results in multi-family residential development of five (5) dwelling units or more produces affordable housing at a set-aside rate of twenty percent (20%). This section shall apply except where inconsistent with applicable law.

§_____ **Affordable Housing Mandatory Set-Aside**

a. If the Borough or the Borough’s Planning Board or Zoning Board of Adjustment permits the construction of multi-family or single-family attached residential development that is “approvable” and “developable,” as defined at N.J.A.C. 5:93-1.3, the Borough or the Borough’s Planning Board or Zoning Board shall require that an appropriate percentage of the residential units be set aside for low and moderate income households.

b. This requirement shall apply beginning with the effective date the Ordinance creating this section was adopted to any multi-family or single-family attached residential development, including the residential portion of a mixed-use project, which consists of five (5) or more new residential units, whether permitted by a zoning amendment, a variance granted by the Borough’s Planning Board or Zoning Board, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation.

c. For any such development for which the Borough’s land use ordinances (e.g. zoning or an adopted Redevelopment Plan) already permitted residential development as of the effective date the Ordinance creating this section was adopted, this requirement shall only apply if the Borough, the Borough’s Planning Board, or the Borough’s Zoning Board permits an increase in approvable and developable gross residential density to at least twice the permitted approvable and developable gross residential density as of the effective date the Ordinance creating this section was adopted.

d. Nothing in this section precludes the Borough, the Borough’s Planning Board, or the Borough’s Zoning Board from imposing an affordable housing set-aside in a development not required to have a set-aside pursuant to this paragraph consistent with N.J.S.A. 52:27D-311(h) and other applicable law.

e. For all inclusionary projects, the appropriate set-aside percentage will be twenty percent (20%) for all for-sale projects and fifteen percent (15%) for all rental projects.

f. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.

g. This requirement does not apply to any sites or specific zones otherwise identified in the Borough's Settlement Agreement with FSHC, which was executed by the Borough on July 28, 2020, or in the Borough's 2020 Housing Element and Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein. h. Furthermore, this section shall not apply to developments containing four (4) or less dwelling units.

i. All subdivision and site plan approvals of qualifying residential developments shall be conditioned upon compliance with the provisions of this section.

j. Where a developer demolishes existing dwelling units and builds new dwelling units on the same site, the provisions of this section shall apply only if the net number of dwelling units is five (5) or more.

k. All inclusionary projects created under this section must comply with the affordable housing requirements in the Borough's Affordable Housing Ordinance at Chapter ___ of the Borough Code and the Uniform Housing Affordability Controls rules (N.J.A.C. 5:80-26.1 et. seq.), as may be amended from time to time.

Section 2. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

Section 3. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of Caldwell, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Municipal Code of the Borough of Caldwell are hereby ratified and confirmed, except where inconsistent with the terms hereof.

Section 4. The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this ordinance to the Essex County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15, and N.J.S.A. 40:55D-63 (if required).

Section 5. After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of Caldwell for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Borough Council, within 35 days after referral, a report including identification of any provisions in the proposed ordinance that are inconsistent with the Master Plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

Section 6. This Ordinance shall take effect immediately upon (1) adoption; (2) approval by the Mayor pursuant to N.J.S.A. 40:69A-149.7; (3) publication in accordance with the laws of the State of New Jersey; and (4) filing of the final form of adopted ordinance by the Clerk with (a) the Essex County Planning Board pursuant to N.J.S.A. 40:55D-16, and (b) the Borough Tax Assessor as required by N.J.S.A. 40:49-2.1.

Section 7. The Borough's unmet need mechanisms provide opportunities for significantly more affordable housing than its Round 3 unmet need obligation. It is anticipated that the unmet need mechanisms could yield sufficient affordable housing to allow the Borough to meet or exceed its entire Round 3 fair share allocation of need prior to the expiration of Round 3 (July 2025). In the event that the Township meets its full fair share prior to the expiration of Round 3, or meets or exceeds its obligation for new construction in any subsequent Round, the Borough reserves the right, at its sole discretion, to remove the requirement that any new development described in this ordinance capture an affordable housing set aside.

DATE OF INTRODUCTION: **January 26, 2021**

DATE OF ADOPTION: **February 23, 2021**

FIRST: Councilman Lace

FIRST:

SECOND: Councilman Rodgers

SECOND:

RECORD OF COUNCIL VOTE

_____ presented the following ordinance - Seconded by: _____

COUNCIL MEMBER Yes No Absent Abstain COUNCIL MEMBER Yes No Absent Abstain

Schmidt						Lace				
Rodgers						DePalma-Iozzi				
Cole						Gates				

Brittany Heun, Deputy Clerk

John Kelley, Mayor

This ordinance, when adopted, must remain in the possession of the Municipal Clerk. Certified copies are available.