

**TOWNSHIP OF WEST CALDWELL  
PUBLIC MEETING MINUTES  
MAY 18, 2021**

A Regular Meeting of the West Caldwell Mayor and Council, in the County of Essex, New Jersey, was held via Zoom webinar, on Tuesday, May 18, 2021, at 7:15 P. M.

The Township Clerk announced that adequate notice of this meeting has been provided in accordance with the Open Public Meetings Act.

**PRESENT:** Mayor Tempesta, Council members Crudele, Cecere, Hladik, Wolsky, Docteroff and Canale.

**OTHERS PRESENT:** Nikole H. Baltycki, Township Administrator/CFO  
Mary S. Donovan, Township Clerk  
Paul G. Jemas, Esq., Township Attorney  
Chief Dennis Capriglione, Police Department  
Chief Michael Luker, Fire Department

Pledge of Allegiance led by Councilman Cecere

Council President Crudele thanked God for the opportunity to serve West Caldwell residents and asked for patience to listen with empathy and strength to act with character and conviction. He thanked all first responders, health care workers, educators and military. He asked God to welcome into His Kingdom Arnold Capriglione, the grandfather of Chief Dennis Capriglione and asked residents for prayers for Mr. Capriglione's family.

Mayor Tempesta stated that it has been 11 years since Colonel John McHugh was killed in service to his country, who was born and raised in West Caldwell. The Governing Body would like to honor him by adding a sign to the Orton Road sign and calling it Colonel McHugh Way.

Mayor Tempesta reading the following resolution attached and made part of these Minutes:

No. 20-128  
By: Mr. Wolsky

**SUBJECT:** RESOLUTION – AUTHORIZING THE APPOINTMENT OF JAMES JOSEPH MC NICHOLAS AS A PROBATIONARY POLICE OFFICER IN THE WEST CALDWELL POLICE DEPARTMENT, EFFECTIVE MAY 19, 2021.

**RESOLVED**, on the recommendation of the Public Safety Committee and the West Caldwell Police Chief that the nomination of James Joseph Mc Nicholas, 25 Eastern Drive, Kendall Park, NJ 08824 who is willing and able to serve as a Probationary Patrol Officer for the West Caldwell Police Department, by Mayor Joseph Tempesta, Jr., be and he is hereby approved as a probationary police officer in the West Caldwell Police Department, effective May 19, 2021 at a salary of \$54,545.00 in accordance with the salary guide.

Mayor Tempesta read James McNicholas' biography into the record.

It was regularly moved by Councilman Docteroff, seconded by Council President Crudele, that the resolution be adopted.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

**SWEARING IN CEREMONY**

Mayor Tempesta swore in James McNicholas with his family present in the public meeting room.

**PUBLIC HEARINGS ON PENDING ORDINANCES:**

Mayor Tempesta asked Clerk Donovan to read the following ordinance No. 1835 "BOND ORDINANCE PROVIDING FOR VARIOUS CAPITAL IMPROVEMENTS IN AND BY THE TOWNSHIP OF WEST CALDWELL, IN THE COUNTY OF ESSEX, NEW JERSEY, APPROPRIATING \$685,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$650,750 BONDS OR NOTES OF THE TOWNSHIP TO FINANCE PART OF THE COST THEREOF.

BE IT ORDAINED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST

**MAY 18, 2021**

CALDWELL, IN THE COUNTY OF ESSEX, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

Section 1. The several improvements described in Section 3 of this bond ordinance are hereby respectively authorized to be undertaken by the Township of West Caldwell, in the County of Essex, New Jersey (the "Township") as general improvements. For the several improvements or purposes described in Section 3, there are hereby appropriated the respective sums of money therein stated as the appropriation made for each improvement or purpose, such sums amounting in the aggregate to \$685,000, and further including the aggregate sum of \$34,250 as the several down payments for the improvements or purposes required by the Local Bond Law. The down payments have been made available by virtue of provision for down payment or for capital improvement purposes in one or more previously adopted budgets.

Section 2. In order to finance the cost of the several improvements or purposes not covered by application of the several down payments, negotiable bonds are hereby authorized to be issued in the principal amount of \$650,750 pursuant to the Local Bond Law. In anticipation of the issuance of the bonds, negotiable bond anticipation notes are hereby authorized to be issued pursuant to and within the limitations prescribed by the Local Bond Law.

Section 3. The several improvements hereby authorized and the several purposes for which the bonds are to be issued, the estimated cost of each improvement and the appropriation therefor, the estimated maximum amount of bonds or notes to be issued for each improvement and the period of usefulness of each improvement are as follows:

<u>Purpose</u>	<u>Appropriation &amp; Estimated Cost</u>	<u>Estimated Maximum Amount of Bonds &amp; Notes</u>	<u>Period of Usefulness</u>
a) Milling and paving of various roads, all as set forth on a list on file in the Office of the Clerk and further including all work and materials necessary therefor and incidental thereto.	\$510,000	\$484,500	10 years
b) The acquisition of police body worn cameras, including all related costs and expenditures incidental thereto.	\$65,000	\$61,750	5 years
c) Engineering expenses relating to the conceptual designs to divert sewer flow to the Two Bridges Sewer Authority, including all related costs and expenditures incidental thereto.	<u>\$110,000</u>	<u>\$104,500</u>	15 years
<b>Total:</b>	<u>\$685,000</u>	<u>\$650,750</u>	

The excess of the appropriation made for each of the improvements or purposes aforesaid over the estimated maximum amount of bonds or notes to be issued therefor, as above stated, is the amount of the down payment for each purpose.

Section 4. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the chief financial officer; provided that no bond anticipation note shall mature later than one year from its date, unless such bond anticipation notes are permitted to mature at such later date in accordance with applicable law. The bond anticipation notes shall bear interest at such rate or rates and be in such form as may be determined by the chief financial officer. The chief financial officer shall determine all matters in connection with bond anticipation notes issued pursuant to this bond ordinance, and the chief financial officer's signature upon the bond anticipation notes shall be conclusive evidence as to all such determinations. All bond anticipation notes issued hereunder may be renewed from time to time subject to the provisions of the Local Bond Law or other applicable law. The chief financial officer is hereby authorized to sell part or all of the bond anticipation notes from time to time at public or private sale and to deliver them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof. The chief financial officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the bond anticipation notes pursuant to this bond ordinance is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the bond anticipation notes sold, the price obtained and the name of the purchaser.

Section 5. The Township hereby certifies that it has adopted a capital budget or a temporary capital budget, as applicable. The capital or temporary capital budget of the Township is hereby amended to conform with the provisions of this bond ordinance to the extent of any inconsistency herewith. To the extent that the purposes authorized herein are inconsistent with the adopted capital or temporary capital budget, a revised capital or temporary capital budget has been filed with the Division of Local Government Services.

Section 6. The following additional matters are hereby determined, declared, recited and stated:

(a) The improvements or purposes described in Section 3 of this bond ordinance are not current expenses. They are all improvements or purposes that the Township may lawfully undertake as general improvements, and no part of the cost thereof has been or shall be specially assessed on property specially benefitted thereby.

(b) The average period of usefulness, computed on the basis of the respective amounts of obligations authorized for each purpose and the reasonable life thereof within the limitations of the Local Bond Law, is 10.32 years.

(c) The Supplemental Debt Statement required by the Local Bond Law has been duly prepared and filed in the office of the Clerk, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey. Such statement shows that the gross debt of the Township as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided in this bond ordinance by \$650,750, and the obligations authorized herein will be within all debt limitations prescribed by that Law.

(d) An aggregate amount not exceeding \$165,000 for items of expense listed in and permitted under N.J.S.A. 40A:2-20 is included in the estimated cost indicated herein for the purposes or improvements.

Section 7. The Township hereby declares the intent of the Township to issue bonds or bond anticipation notes in the amount authorized in Section 2 of this bond ordinance and to use the proceeds to pay or reimburse expenditures for the costs of the purposes or improvements described in Section 3 of this bond ordinance. This Section 7 is a declaration of intent within the meaning and for purposes of the Treasury Regulations.

Section 8. Any grant moneys received for the purposes or improvements described in Section 3 hereof shall be applied either to direct payment of the cost of the improvements or to payment of the obligations issued pursuant to this bond ordinance. The amount of obligations authorized but not issued hereunder shall be reduced to the extent that such funds are so used.

Section 9. The chief financial officer of the Township is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the Township and to execute such disclosure document on behalf of the Township. The chief financial officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the Township pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") for the benefit of holders and beneficial owners of obligations of the Township and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof, provided such undertaking is and continues to be, in the opinion of a nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the Township fails to comply with its undertaking, the Township shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

Section 10. The full faith and credit of the Township are hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this bond ordinance. The obligations shall be direct, unlimited obligations of the Township, and the Township shall be obligated to levy *ad valorem* taxes upon all the taxable real property within the Township for the payment of the obligations and the interest thereon without limitation of rate or amount.

Section 11. This bond ordinance shall take effect 20 days after the first publication thereof after final adoption, as provided by.

Mayor Tempesta stated that this was the time for a public hearing and asked if any one wished to be heard.

Mayor Tempesta asked if any one wished to be heard for a second time.

There were no comments.

It was regularly moved by Council President Crudele, seconded by Councilman Cecere that the public hearing be closed.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative by voice.

It was regularly moved by Council President Crudele, seconded by Councilman Cecere that the Ordinance be passed on second reading.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

Mayor Tempesta asked Clerk Donovan to read the following ordinance No. 1836 "BOND ORDINANCE PROVIDING FOR VARIOUS IMPROVEMENTS TO THE WATER UTILITY IN AND BY THE TOWNSHIP OF WEST CALDWELL, IN THE COUNTY OF ESSEX, NEW JERSEY, APPROPRIATING \$688,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$688,000 BONDS OR NOTES OF THE TOWNSHIP TO FINANCE THE COST THEREOF.

BE IT ORDAINED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST

**MAY 18, 2021**

CALDWELL, IN THE COUNTY OF ESSEX, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

Section 1. The several improvements described in Section 3 of this bond ordinance are hereby authorized to be undertaken by the Township of West Caldwell, in the County of Essex, New Jersey (the "Township"). For the several improvements or purposes described in Section 3, there are hereby appropriated the respective sums of money therein stated as the appropriation made for each improvement or purpose, such sums amounting in the aggregate to \$688,000. No down payment is required as the purposes authorized herein are deemed self-liquidating and the bonds and bond anticipation notes authorized herein are deductible from the gross debt of the Township, as more fully explained in Section 6(e) of this bond ordinance.

Section 2. In order to finance the cost of the several improvements or purposes, negotiable bonds are hereby authorized to be issued in the principal amount of \$688,000 pursuant to the Local Bond Law. In anticipation of the issuance of the bonds, negotiable bond anticipation notes are hereby authorized to be issued pursuant to and within the limitations prescribed by the Local Bond Law.

Section 3. The several improvements hereby authorized and the several purposes for which the bonds are to be issued, the estimated cost of each improvement and the appropriation therefor, the estimated maximum amount of bonds or notes to be issued for each improvement and the period of usefulness of each improvement are as follows:

<u>Purpose</u>	<u>Appropriation &amp; Estimated Cost</u>	<u>Estimated Maximum Amount of Bonds &amp; Notes</u>	<u>Period of Usefulness</u>
a) The replacement of the water main on Crane Avenue and McKinley Avenue, including all work and materials necessary therefor and incidental thereto.	\$668,000	\$668,000	40 years
b) The acquisition of a centralized alarm system, including all related costs and expenditures incidental thereto.	\$20,000	\$20,000	10 years
<b>Total:</b>	<u>\$688,000</u>	<u>\$688,000</u>	

Section 4. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the chief financial officer; provided that no bond anticipation note shall mature later than one year from its date, unless such bond anticipation notes are permitted to mature at such later date in accordance with applicable law. The bond anticipation notes shall bear interest at such rate or rates and be in such form as may be determined by the chief financial officer. The chief financial officer shall determine all matters in connection with bond anticipation notes issued pursuant to this bond ordinance, and the chief financial officer's signature upon the bond anticipation notes shall be conclusive evidence as to all such determinations. All bond anticipation notes issued hereunder may be renewed from time to time subject to the provisions of the Local Bond Law or other applicable law. The chief financial officer is hereby authorized to sell part or all of the bond anticipation notes from time to time at public or private sale and to deliver them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof. The chief financial officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the bond anticipation notes pursuant to this bond ordinance is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the bond anticipation notes sold, the price obtained and the name of the purchaser.

Section 5. The Township hereby certifies that it has adopted a capital budget or a temporary capital budget, as applicable. The capital or temporary capital budget of the Township is hereby amended to conform with the provisions of this bond ordinance to the extent of any inconsistency herewith. To the extent that the purposes authorized herein are inconsistent with the adopted capital or temporary capital budget, a revised capital or temporary capital budget has been filed with the Division of Local Government Services.

Section 6. The following additional matters are hereby determined, declared, recited and stated:

(a) The improvements or purposes described in Section 3 of this bond ordinance are not current expenses. They are all improvements or purposes that the Township may lawfully undertake as self-liquidating purposes of a municipal public utility. No part of the cost thereof has been or shall be specially assessed on property specially benefitted thereby.

(b) The average period of usefulness, computed on the basis of the respective amounts of obligations authorized for each purpose and the reasonable life thereof within the limitations of the Local Bond Law, is 39.12 years.

(c) The Supplemental Debt Statement required by the Local Bond Law has been duly prepared and filed in the office of the Clerk, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the

State of New Jersey. Such statement shows that the gross debt of the Township as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided in this bond ordinance by \$688,000, but that the net debt of the Township determined as provided in the Local Bond Law is not increased by this bond ordinance. The obligations authorized herein will be within all debt limitations prescribed by the Local Bond Law.

(d) An aggregate amount not exceeding \$103,000 for items of expense listed in and permitted under N.J.S.A. 40A:2-20 is included in the estimated cost indicated herein for the purposes or improvements.

(e) This bond ordinance authorizes obligations of the Township solely for purposes described in N.J.S.A. 40A:2-7(h). The obligations authorized herein are to be issued for purposes that are deemed to be self-liquidating pursuant to N.J.S.A. 40A:2-47(a) and are deductible from the gross debt of the Township pursuant to N.J.S.A. 40A:2-44(c).

Section 7. The Township hereby declares the intent of the Township to issue bonds or bond anticipation notes in the amount authorized in Section 2 of this bond ordinance and to use the proceeds to pay or reimburse expenditures for the costs of the purposes described in Section 3 of this bond ordinance. This Section 7 is a declaration of intent within the meaning and for purposes of the Treasury Regulations.

Section 8. Any grant moneys received for the purposes or improvements described in Section 3 hereof shall be applied either to direct payment of the cost of the improvements or to payment of the obligations issued pursuant to this bond ordinance. The amount of obligations authorized but not issued hereunder shall be reduced to the extent that such funds are so used.

Section 9. The chief financial officer of the Township is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the Township and to execute such disclosure document on behalf of the Township. The chief financial officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the Township pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") for the benefit of holders and beneficial owners of obligations of the Township and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof, provided such undertaking is and continues to be, in the opinion of a nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the Township fails to comply with its undertaking, the Township shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

Section 10. The full faith and credit of the Township are hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this bond ordinance. The obligations shall be direct, unlimited obligations of the Township, and the Township shall be obligated to levy *ad valorem* taxes upon all the taxable real property within the Township for the payment of the obligations and the interest thereon without limitation of rate or amount.

Section 11. This bond ordinance shall take effect 20 days after the first publication thereof after final adoption

Mayor Tempesta stated that this was the time for a public hearing and asked if any one wished to be heard.

Mayor Tempesta asked if any one wished to be heard for a second time.

There were no comments.

It was regularly moved by Council President Crudele, seconded by Councilman Cecere that the public hearing be closed.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative by voice.

It was regularly moved by Council President Crudele, seconded by Councilman Cecere that the Ordinance be passed on second reading.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

Mayor Tempesta asked Clerk Donovan to read the following ordinance No. 1837 "AN ORDINANCE AMENDING "General ORDINANCES," CHAPTER 16 ENTITLED "SOIL REMOVAL" AND CHAPTER 20 ENTITLED "ZONING".

**WHEREAS**, pursuant to N.J.S.A. 40:55D-62, the governing body of a municipality may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of the buildings and structures thereon; and

**NOW, THEREFORE, BE IT ORDAINED**, BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST CALDWELL, as follows:

**Section 1.**

The Township of West Caldwell Municipal Code, Chapter 16 entitled "Soil Removal" is amended as follows:

Section 16-15 is hereby deleted in its entirety and reserved for future use.

**Section 2.**

The Township of West Caldwell Municipal Code is amended to add a new Chapter 16A entitled “Lot Grading”, as follows:

**CHAPTER 16A Lot Grading**

**§16-1 LOT GRADING PERMIT; APPLICATION AND CRITERIA; LOT GRADING PLAN AND REVIEW; FEE.**

- a. Any construction which requires excavating more than two cubic yards of soil (as determined by the township), any soil disturbance or any alterations to existing grade, whether or not a zoning or construction permit is required, shall require a lot grading permit.
- b. Each application for a lot grading permit shall be written on the application form provided by the Township Engineering Department and shall be submitted to that office accompanied by three signed and sealed copies of a detailed site grading plan which shall be prepared by a licensed professional engineer, architect or landscape architect at a scale of not less than one inch equals 30 feet.
- c. The detailed lot grading plan shall include at a minimum the following:
  1. Delineation of the property boundaries including all lot line dimensions; front, side and rear yard setback dimensions, easements, encroachments and restrictions; locations of all existing or proposed structures (primary and accessory), if any, dimensions thereof and first-floor elevation; location of all buildings on adjoining lots; specific delineation of the area within the lot boundaries where the work is to be performed, description of existing and proposed features of the property and specifically the area surrounding the site of work.
  2. Location of retaining walls with top and bottom elevations and details designed by a licensed professional engineer. Walls over four feet in height shall require an inspection and as-built certification by a licensed professional engineer.
  3. The applicable tax map sheet, block and lot number, date, graphic scale, North arrow, zone designation, zoning requirements and the names and addresses of the owner or owners of the tract, the applicant (if other than the owner) and of the professional who prepared the plan.
  4. The 100-year floodplain limits within the subject property shall be shown per FEMA Flood Insurance Rate Map and NJDEP Flood Hazard Area Delineation, or applicant shall submit a certification from a licensed professional engineer or land surveyor indicating that the property is not in the floodplain.
  5. Applicant shall show by metes and bounds all delineated wetlands and transition areas approved through a NJDEP letter of interpretation. NJDEP file number shall be noted on the plan. If no wetlands exist, plan must contain a note confirming this fact.
  6. Existing and proposed contours at intervals of one foot where the topography is less than 5% overall or two feet when the topography is greater than 5%.
  7. The layout of existing public streets and public utilities, proposed driveway alignment and profile grade that indicates intermittent elevations at roadway center line, gutter, right-of-way line and garage floor, etc.
  8. The location of any existing potable water or sanitary sewage disposal facilities on or within 100 feet of the site.
  9. The location of proposed vehicular facilities, including roads, drives or parking areas.
  10. The location and pipe size of leader and footing drains, with inverts at house and street connections. All drains shall connect with the municipal stormwater drainage system whenever feasible. Location of existing storm sewer invert and flow direction at tie-in point shall be shown. If drains cannot connect to the public system, show dry well location, elevations and detail (size and cross-section). Splash pad/surface discharge will be permitted only in specific cases approved by the Township Engineer.
  11. The location of all existing landscaping, including trees, shrubs and ground covers, with type and size of trees and shrubs. The location of trees with a caliper of eight inches or more must be specifically indicated. Existing and proposed tree line within the area of disturbance shall be shown.
  12. The disposition and extent of topsoil to be removed or backfilled.
  13. Soil excavation (cut/fill) balance calculation. Proposed soil movement quantities related to the site plan design must be provided on the plan. Soil import or export in excess of 100 cubic yards must conform to the provisions of this chapter.
  14. A soil erosion and sediment control plan including proposed silt fence, soil stockpile, etc.
  15. A time schedule indicating the anticipated start and completion dates of the development sequence, the expected date of completion of each protection measure provided for in the soil erosion and sediment control plan and the stormwater management plan and the time of exposure of each area prior to the completion of such measures.
  16. Proposed and as-built plans must include a note that driveway sight triangle requirements have been met.
  17. The following notifications and certifications shall be inscribed on the plan:
    - (a) That there will be no deviation from the proposed grading plan without approval, in writing, from the Township Engineer.
    - (b) That, at the discretion of the Township Engineer, applicant may be required to field stake a property limit in the interest of limiting the disturbance to the subject property.
    - (c) That the applicant's engineer certifies that the grading plan can tie into existing topographic contours on adjoining lots without an adverse grading or drainage impact and that all disturbance and grading can be limited to within the property in question.

- (d) That the applicant shall, upon notification from the Township Engineer, field stake wetlands and/or buffer area limits prior to any land disturbance or clearing.
18. The Township Engineer shall have the right to modify, waive or add requirements which may be site-specific.
- d. The following criteria shall be applicable in the review of an application for a lot grading permit:
1. No soil shall be excavated, removed, deposited or disturbed except as a result of and in accordance with the lot grading plan approved under the terms of this chapter.
  2. Provision shall be made for the proper disposition of surface water runoff so that it shall not create unstable conditions. Appropriate storm drainage facilities shall be provided to protect downstream properties.
  3. Provision shall be made for any structure or protective measures that the proposed plan may require for the protection of the public safety, including without limitation retaining walls, guide rails, headwalls and fences.
  4. Any proposed building, structure, grading or attendant protective measures will not impede the flow of surface water through any watercourse. Only a nominal increase in runoff rates and velocities will be allowed due to construction.
  5. Any proposed vehicular facilities, including roads, drives or parking areas, shall be designed so that any land disturbances shall not cause excessive erosion. Both the vertical and horizontal alignment of vehicular facilities shall be so designed that hazardous circulation conditions will not be created.
  6. Any file placed on the property shall be properly stabilized and, when found necessary depending upon existing slopes and soil types, supported by retaining walls or other appropriate structures as approved by the Township Engineer.
  7. There shall be no alteration of site elevations in excess of one foot within five feet of an adjoining property.
  8. Changes in grade shall not exceed a slope of 2-to-1 unless supported by retaining walls or maintenance-free vegetation, as appropriate.
- e. An application fee of \$250 shall be required for each permit. The fee shall cover the cost of the administrative review of the initial submission and one revision. All engineering costs shall be charged to an escrow account which shall be established at the time of making the application. Engineering fees shall be based upon the Township Engineer's regular hourly rate. All fees must be paid in full prior to the issuance of a certificate of occupancy or the release of any performance guarantee that may have been posted with respect to the property.
- f. Prior to the issuance of any certificate of occupancy, a New Jersey licensed professional engineer must certify that the final as-built grading of the lot is in compliance with the approved grading plan and foundation as-builts must be submitted to the Zoning Officer for approval.

§16A-2 VIOLATIONS AND PENALTIES.

Violations of this chapter shall be punishable in accordance with Section 1-5 of the Township Code.

**Section 3.**

The Township of West Caldwell Municipal Code, Chapter 20 entitled "Zoning" is amended as follows:

§ 20-19.4 Residential Swimming Pools.

- b. One private residential swimming pool having a capacity of 600 gallons or more, whether below or above ground, shall be permitted in accordance with the following provisions:
1. Such pool shall be located in the rear yard only, and such pool, including associated decks, patios, bathhouses and other directly related accessory structures, shall not occupy more than 60% of the yard, or as may be further limited pursuant to Subsection 20-19.1h.
  2. Such pool shall have adequate filtering, circulation, clarification and chlorination, all subject to the approval of the Township Health Officer. Such equipment shall be located in accordance with Section 20-21.11.

§ 20-21.11 Outdoor Ground-Mounted Equipment on Residential Properties.

On lots containing single-family or two-family dwellings, outdoor ground-mounted equipment, including air-conditioning equipment, generators, and swimming pool heaters, filters, pumps, and other similar mechanical equipment, shall comply with the following provisions:

- a. Purpose. In order to maintain a desirable visual environment along public streets, outdoor ground-mounted equipment shall be located in an inconspicuous manner. To the greatest extent possible, such equipment shall be located in the rear yard or rear half of the side yard so as to not be prominently visible from the public right-of-way.
- b. In cases where the configuration of lawfully existing structures on the property presents a practical difficulty to locating such equipment in the rear yard or rear half of the side yard, the Township Zoning Official and Construction Official may allow such equipment to be located in an alternative location in the front half of the side yard. No such equipment shall be located in the front yard.
- c. On corner lots where the configuration of lawfully existing structures on the property presents a practical difficulty to locating such equipment in the rear yard or rear half of the side yard, the Township Zoning Official and Construction Official may allow such equipment to be located in an alternative location in the front half of the side yard or in the front yard not containing the front entrance.
- d. All ground-mounted equipment shall be adequately screened from public view with a fence and/or landscaping, pursuant to Subsection 20-21.12.
- e. No outdoor, ground-mounted air conditioning equipment in any residence zone district shall be located closer to any property line than 50% of the actual or required side yard setback to the principal building, whichever is greater, and in no case shall any such equipment be located less than 5 feet from a property line.

f. No generator or swimming pool heaters, filters, pumps, and other similar mechanical equipment in any residence zone district shall be located closer to any property line than the required side yard setback to the principal building.

§ 20-21.17 Generators.

b. Permit Required; Location for Outside Equipment.

1. No generator shall hereafter be permanently installed to serve any existing dwelling erected on a lot located in any residential district of the Township of West Caldwell, unless such generator meets the requirements of this section and a zoning permit and construction permits are obtained from the Township.
2. For a single- or two-family residence, one generator shall be permitted, which shall be located in accordance with Section 20-21.11. In the event the generator is proposed to service a two-family dwelling, the requirements of the section shall be applicable to each dwelling unit, if more than one generator is being proposed.

**Section 4.**

All ordinances of the Township of West Caldwell which are inconsistent with the provisions of this Ordinance are hereby repealed as to the extent of such inconsistency.

**Section 5.**

Should any section, clause, sentence, phrase or provision of this Ordinance be declared unconstitutional or invalid by a Court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

**Section 6.**

The Township Clerk is directed to give notice at least ten 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 7.**

After introduction, the Township Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Township of West 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 Township Council, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

**Section 8.** The Township Clerk is hereby directed to publish notice of the proposed ordinance pursuant to N.J.S.A. 40:49-2.1.

**Section 9.**

This Ordinance shall take effect upon final passage, adoption, and publication in the manner prescribed by law.

Mayor Tempesta stated that this was the time for a public hearing and asked if any one wished to be heard.

Mayor Tempesta asked if any one wished to be heard for a second time.

There were no comments.

It was regularly moved by Councilman Wolsky, seconded by Councilwoman Canale that the public hearing be closed.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative by voice.

It was regularly moved by Councilman Wolsky, seconded by Councilwoman Canale that the Ordinance be passed on second reading.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

**COMMUNICATIONS:**

- A-1 A communication from Nikole H. Baltycki, Chief Finance Officer, certifying funds are available under the 2021 Budget of Appropriations – May 18, 2021 Schedule; further certifying that there will be no over-expenditures of any line item in the Budget as a result of this schedule.
- A-2 A communication from EcolSciences on behalf of Sunrise Realty, LLC regarding a freshwater wetlands letter of interpretation.
- A-3 A communication from WSP USA Inc. on behalf of the former Deluxe Corp, regarding a classification exception area.

A-4 A communication from Tami Michelotti, Clerk, North Caldwell regarding a zoning ordinance application fees.

Received and placed on file.

**SCHEDULE OF BILLS ORDERED PAID MAY 2021**

	<u>Checks</u>	<u>Amount</u>
CURRENT ACCOUNT – VALLEY NATIONAL BANK	13017-13137	\$7,130,709.01
WATER OPERATING ACCOUNT- VALLEY NATIONAL BANK	11062-11079	\$70,491.95
POOL UTILITY ACCOUNT	3391-3404	\$15,672.39
GENERAL CAPITAL ACCOUNT	2944-2948	\$154,577.67
WATER CAPITAL	8283-8284	\$7,478.68
GENERAL TRUST – VALLEY NATIONAL BANK	6367-6375	\$147,163.19
DOG TRUST	1084-1085	\$12,596.20
DEVELOPERS’ TRUST	1391-1399	\$10,847.50

It was regularly moved by Council President Crudele, seconded by Councilman Cecere that the Bill List as amended by the Chief Financial Officer be attached to the Minutes and be paid and that the Mayor and Treasurer be authorized to sign the necessary warrants for their payment.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

**APPROVAL OF MINUTES:**

On the recommendation of Councilman Docteroff, seconded by Councilwoman Canale, it was regularly moved that the minutes of the regular meeting of May 4, 2021 be approved.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

**CONSENT AGENDA:**

Mayor Tempesta stated that matters listed within the Consent Agenda have been referred to members of the Township Council for reading and study, are considered to be routine and will be enacted by one motion of the Township Council with no separate discussion. If separate discussion is desired, the resolution may be removed and be subject to a separate roll call.

Administrator Baltycki reported on the two closed session items.

It was regularly moved by Council President Crudele, seconded by Councilman Hladik that the twelve Resolutions on the Agenda this evening be approved.

The following twelve Resolutions by Consent were made part of these Minutes:

No. 21-129  
By: Councilman Wolsky

SUBJECT: RESOLUTION – AUTHORIZING RENEWAL OF AN ALCOHOLIC BEVERAGE LICENSE WETLANDS SPIRITS LCC FOR THE YEAR 2021-2022.

**RESOLVED**, by the Mayor and Council of the Township of West Caldwell, in the County of Essex and State of New Jersey, that the following pocket license be renewed, subject to approval from all applicable municipal agencies:

That a Plenary Retail Consumption License No. 0721-33-007-004 (pocket license) be issued to Wetlands Spirits LLC, former licensed location of 1090 Bloomfield Avenue, West Caldwell for the year 2021-2022.

**BE IT RESOLVED**, that the Clerk of the Township of West Caldwell be and she is hereby directed to forward a certified copy of this Resolution to the New Jersey Division of Alcoholic Beverage Control.

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No. 21-130  
By: Councilman Wolsky

SUBJECT: RESOLUTION – APPROVING THE AFFIRMATIVE MARKETING PLAN OF THE TOWNSHIP OF WEST CALDWELL’S 2021 HOUSING ELEMENT AND FAIR SHARE PLAN.

**WHEREAS**, on June 16, 2020, the Township of West Caldwell (“Township”) entered into a Settlement Agreement with Fair Share Housing Center (“FSHC”) that established the Township’s fair share obligation and preliminarily approved the Township’s compliance mechanisms in accordance with the March 10, 2015 decision of the Supreme Court which transferred responsibility to review and approve housing elements and fair share plans from the Council on Affordable Housing (COAH) to designated Mount Laurel trial judges within the Superior Court; and

**WHEREAS**, on September 25, 2020, the Honorable Robert H. Gardner, J.S.C., entered an Order approving the FSHC Settlement Agreement finding it to be fair and reasonable to the region’s low- and moderate-income households; and

**WHEREAS**, the Township’s professionals are preparing a Round 3 Housing Element and Fair Share Plan consistent with the Court-approved Settlement Agreement; and

**WHEREAS**, the Plan shall include an Affirmative Marketing Plan component, as required by the Council on Affordable Housing’s (“COAH”) rules at N.J.A.C. 5:93-11, which is designed to attract renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to the affordable units located in the Township; and

**WHEREAS**, the Affirmative Marketing Plan was prepared in accordance with COAH’s rules, the Uniform Housing Affordability Controls at N.J.A.C. 5:80-26 and the Court-approved Settlement Agreement.

**NOW THEREFORE, BE IT RESOLVED** the Township Council of the Township of West Caldwell, Essex County, State of New Jersey, hereby approves the Affirmative Marketing Plan component of the Housing Element and Fair Share Plan, attached hereto as Exhibit A.

No. 21-131  
By: Councilman Cecere

SUBJECT: RESOLUTION – AUTHORIZING REFUNDS IN THE RECREATION OFFICE.

**WHEREAS**, there is a need to issue refunds for Recreation Program Fees collected in the Recreation Office as shown below; and

**WHEREAS**, the Recreation Director recommends the refunds of these fees.

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Township of West Caldwell that the proper officers be and they are hereby authorized and directed to transfer funds or issue checks to clear the refunds as shown below:

**CURRENT FUND**

<u>Name</u>	<u>Amount</u>	<u>Reason</u>
Diana DaCosta 12 Seymour Street Caldwell, NJ 07006	\$60.00	Withdrawal - track
TOTAL TRUST FUND REFUNDS:		\$60.00

No. 21-132  
By: Councilman Hladik

SUBJECT: RESOLUTION – AUTHORIZING THE AWARD OF A NONFAIR AND OPEN CONTRACT TO ALPHADOG SOLUTIONS INC. FOR WEBSITE DESIGN FOR THE TOWNSHIP OF WEST CALDWELL.

**WHEREAS**, the Township of West Caldwell has a need to award a contract for website design as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20; and,

**WHEREAS**, AlphaDog Solutions Inc., 335 Union Avenue, Belleville, NJ 07109, has completed and submitted a Business Entity Disclosure Certification that certifies that AlphaDog Solutions Inc. has not made any reportable contributions to a political or candidate committee in the Township of West Caldwell in the previous one year, and that the contract will prohibit AlphaDog Solutions Inc. from making any reportable contributions through the term of the contract period, and

**WHEREAS**, the Chief Financial Officer has certified that sufficient funds are available for said purpose in the Capital Fund; and

**NOW THEREFORE, BE IT RESOLVED** that the Mayor and Council of the Township of West Caldwell, County of Essex, State of New Jersey authorizes Township Officials to enter into a contract in an amount not to exceed \$24,580.00 with AlphaDog Solutions Inc. as described herein; and,

**BE IT FURTHER RESOLVED** that the Business Disclosure Entity Certification and Non-

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Collusion Affidavit be placed on file with this resolution.

No. 21-133  
By: Councilwoman Canale

**SUBJECT: RESOLUTION – AUTHORIZING CANCELLATION OF OUTSTANDING CHECKS IN THE PAYROLL FUND.**

**WHEREAS**, there exists outstanding checks in the Payroll Fund; and  
**WHEREAS**, these outstanding checks issued by the Township of West Caldwell are one year old or older and it has been determined that this check should be cancelled.

**NOW, THEREFORE, BE IT RESOLVED**, that the following outstanding checks be cancelled:  
**PAYROLL FUND:**

<u>DATE</u>	<u>CHECK #</u>	<u>ISSUED TO</u>	<u>AMOUNT</u>
8/31/2018	12301	Conor P Byrne	\$ 79.49
8/16/2019	13186	Spencer D Brown	\$ 122.02
8/30/2019	13297	Victor Tyne	\$ 452.57

No. 21-134  
By: Councilman Crudele

**SUBJECT: RESOLUTION — AUTHORIZING EMERGENCY TEMEPORARY APPROPRIATIONS – AMENDMENT #3.**

**WHEREAS**, emergent conditions have risen with respect to payment of salary and wages, insurance and contracted services and no adequate provision has been made in the 2021 temporary appropriations for the aforesaid purpose and N.J.S.A. 40A:4-20 provides for the creation of an emergency temporary appropriation for the purpose above mentioned; and

**WHEREAS**, the total emergency temporary resolutions adopted in the year 2021 pursuant to the provisions of Chapter 96, P.L. 1951 (N.J.S.A. 40A:4-20) including this resolution total \$8,890,902.39 in the Current Fund and \$1,496,868.75 in the Water Utility Fund.

**NOW, THEREFORE, BE IT RESOLVED**, (not less than two-thirds of all members thereof affirmatively concurring) that in accordance with N.J.S.A. 40A:4-20.

1. An emergency temporary appropriation be and the same is hereby made in the Current Fund for the following appropriations in the amount of \$558,586.15.
2. An emergency temporary appropriation be and the same is hereby made for the following Water Utility Fund appropriations in the amount of \$305,000.00.
3. That one certified copy of this resolution be filed with the Director of Local Government Services.

**CURRENT FUND**

***APPROPRIATIONS WITHIN CAPS***

**General Government**

Elections/Municipal Clerk	
Other Expense	\$ 10,000.00
Financial Administration	
Other Expense	\$ 2,000.00
Assessment of Taxes	
Other Expense	\$ 1,500.00
Collection of Taxes	
Other Expense	\$ 1,500.00
Mayor and Council	
Other Expense	\$ 2,000.00
Legal Services and Costs	
Other Expense	\$ 25,000.00
Engineering Services and Costs	
Other Expense	\$ 25,000.00
Public Buildings and Grounds	
Salary and Wages	\$ 2,500.00
Other Expense	\$ 10,000.00
Planning Board	
Other Expense	\$ 1,000.00
Board of Adjustments	
Other Expense	\$ 10,000.00
Municipal Court	
Other Expense	\$ 1,000.00

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Insurance		
Workers' Compensation	\$	58,086.15
Employee Group Health	\$	100,000.00
<b>Public Safety</b>		
Fire		
Other Expenses	\$	20,000.00
Uniform Fire Safety Act-Fire Prevention		
Other Expenses	\$	1,000.00
Police		
Salaries and Wages	\$	100,000.00
Other Expenses	\$	45,000.00
Emergency Management Services		
Salaries and Wages	\$	1,000.00
Other Expenses	\$	500.00
<b>Streets and Roads</b>		
Road Repair and Maintenance		
Salaries and Wages	\$	15,000.00
Other Expenses	\$	5,000.00
Snow Removal		
Other Expenses	\$	5,000.00
Motor Vehicle Equipment Service and Repair		
Other Expenses	\$	15,000.00
<b>Sanitation</b>		
Recycling		
Other Expenses	\$	500.00
<b>Health and Welfare</b>		
Board of Health		
Other Expenses	\$	2,000.00
<b>Recreation and Education</b>		
Parks and Playgrounds		
Other Expenses	\$	10,000.00
<b>Construction Official</b>		
Other Expenses	\$	1,500.00
<b>Utilities</b>		
Gasoline	\$	10,000.00
Electricity	\$	5,000.00
Telephone and Telegraph	\$	2,500.00
Natural Gas	\$	5,000.00
Street Lighting	\$	10,000.00
Landfill/Solid Waste Disposal Costs (ECUA)	\$	30,000.00
<b>Terminal Leave</b>	\$	10,000.00
<b>Statutory Expenditures</b>		
Social Security System	\$	15,000.00
<b>SUBTOTAL CURRENT FUND APPROPRIATIONS</b>	<b>\$</b>	<b>558,586.15</b>
<b><i>TOTAL CURRENT FUND TEMPORARY APPROPRIATIONS</i></b>	<b><i>\$</i></b>	<b><i>558,586.15</i></b>
<b>WATER UTILITY FUND</b>		
Other Expense	\$	300,000.00
Statutory Expenditures:		
Social Security	\$	5,000.00
<b>SUBTOTAL APPROPRIATIONS</b>	<b>\$</b>	<b>305,000.00</b>
<b><i>TOTAL TEMPORARY WATER UTILITY APPROPRIATIONS</i></b>	<b><i>\$</i></b>	<b><i>305,000.00</i></b>

MAY 18, 2021

By: Councilman Crudele

SUBJECT: RESOLUTION – SELF-EXAMINATION OF BUDGET.

WHEREAS, N.J.S.A. 40A:4-78b has authorized the Local Finance Board to adopt rules that permit municipalities in sound fiscal condition to assume the responsibility, normally granted to the Director of the Division of Local Government Services, of conducting the annual budget examination; and

WHEREAS, N.J.A.C. 5:30-7 was adopted by the Local Finance Board on February 11, 1997; and

WHEREAS, pursuant to N.J.A.C. 5:30-7.2 through 7.5, the Township of West Caldwell has been declared eligible to participate in the program by the Division of Local Government Services and the Chief Financial Officer has determined that the local government meets the necessary conditions to participate in the program for the 2021 budget year.

NOW THEREFORE BE IT RESOLVED by the Township Council of the Township of West Caldwell that in accordance with N.J.A.C. 5:30-7.6a & 7.6b and based upon the Chief Financial Officer's certification, the governing body has found the budget has met the following requirements:

1. That with reference to the following items, the amounts have been calculated pursuant to law and appropriated as such in the budget:
  - a. Payment of interest and debt redemption charges
  - b. Deferred charges and statutory expenditures
  - c. Cash deficit of preceding year
  - d. Reserve for uncollected taxes
  - e. Other reserves and non-disbursement items
  - f. Any inclusions of amounts required for school purposes.
2. That the provisions relating to limitation on increases of appropriations pursuant to N.J.S.A. 40A:4-45.2 and appropriations for exceptions to limits on appropriations found at N.J.S.A. 40A:4-45.3 et seq., are fully met (complies with CAP law).
3. That the budget is in such form, arrangement, and content as required by the Local Budget Law and N.J.A.C. 5:30-4 and 5:30-5.
4. That pursuant to the Local Budget Law:
  - a. All estimates of revenue are reasonable, accurate and correctly stated,
  - b. Items of appropriation are properly set forth
  - c. In itemization, form, arrangement and content, the budget will permit the exercise of the comptroller function within the municipality.
5. The budget and associated amendments have been introduced and publicly advertised in accordance with the relevant provisions of the Local Budget Law, except that failure to meet the deadlines of N.J.S.A. 40A:4-5 shall not prevent such certification.
6. That all other applicable statutory requirements have been fulfilled.

BE IT FURTHER RESOLVED that a copy of this resolution will be forwarded to the Director of the Division of Local Government Services upon adoption.

No. 21-136

By: Councilman Docteroff

SUBJECT: RESOLUTION - AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN LOHMANN THERAPY SYSTEMS CORP. AND THE TOWNSHIP OF WEST CALDWELL.

WHEREAS, there exists a need for the Township of West Caldwell (the "Township") to obtain open space in conjunction with the Township's recreational and other activities; and

WHEREAS, Lohmann Therapy Systems Corp. ("LTS") 21 Henderson Drive, West Caldwell, NJ desires to allow the Township to use the property located at 15 Henderson Drive (the "Property") for use on weekday evenings and during weekend days and evenings for said recreational and other activities as enumerated in the attached agreement; and

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of West Caldwell, in the County of Essex, as follows.

1. All Township officials are hereby authorized and directed to take any and all action necessary and appropriate to effectuate the terms of this Resolution.

No. 21-137

By: Councilman Crudele

SUBJECT: RESOLUTION - AUTHORIZING REFUNDS, OVERPAYMENTS OR CANCELLATIONS IN THE TAX OFFICE.

WHEREAS, there appears on the tax records overpayments or otherwise as shown below; and

WHEREAS, the overpayments were created by the reasons indicated below, and the Collector of Taxes recommends the refund or transfers of such overpayments;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Township of West Caldwell that the proper officers be and they are hereby authorized and directed to transfer funds or issue checks refunding such overpayments as hereafter shown below:

**CODE OF REASONS**

- |                             |                       |
|-----------------------------|-----------------------|
| 1. Incorrect Payment-Refund | 8. Overpayment-Refund |
|-----------------------------|-----------------------|

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- |   |  |
|---|--|
| 2. Duplicate Payment-Refund                       | 9. Tax Title Lien Redemption                   |
| 3. Vets, Senior Citizen, Exempt Prop Refund/Allow | 10. Homestead Rebate/NJ Saver                  |
| 4. Apply Overpayment to Next Year                 | 11. Apply Overpayment to Current Year          |
| 5. Cancellation of Balance of Less than \$5.00    | 12. Cancellation of Credit of Less than \$5.00 |
| 6. Assessment Changes                             | 13. Cancellation of Taxes                      |
| 7. Tax Appeal                                     | 14. Other - Cancellation of Credit over \$5.00 |

<b>Block</b>	<b>Lot</b>	<b>Qual</b>	<b>Owner Name</b>	<b>Amount</b>	<b>Year</b>	<b>Reason</b>
2901	20		Canbis LLC	\$ 49,231.95	2018	9
			31 Orton Road	<u>\$ 41,200.00</u>	Premium	
Certificate #18-00002				\$ 90,431.95		

Check payable to: Christiana T C/F CE1/Firsttrust  
P.O. Box 5021  
Philadelphia, PA 19111-5021

**TOTAL TTL REDEMPTION - \$ 90,431.95**

No. 21-138  
By: Councilman Wolsky

**SUBJECT: RESOLUTION – AUTHORIZING VERO AMICI FOR CHARITY FOR AN OFF PREMISE 50/50 RAFFLE TO BE HELD ON DECEMBER 10, 2021, LICENSE NO. 446, ID NO. 535-4-37081.**

**WHEREAS**, Vero Amici for Charity has submitted a Raffle License Application No. 446, ID No. 535-4-37081 for an off premise 50/50 raffle to be held on December 10, 2021 at the West Caldwell Civic Center, 5 Fairfield Avenue, West Caldwell, NJ; and

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Township of West Caldwell, hereby approves Raffle License Application No. 446; and,

**BE IT FURTHER RESOLVED** that said license shall be issued subject to all rules and regulations of the Legalized Games of Chance Control Commission of the State of New Jersey.

No. 21-139  
By: Councilman Crudele

**SUBJECT: RESOLUTION – TO ANTICIPATE MISCELLANEOUS REVENUES IN THE 2021 BUDGET USING THE THREE-YEAR AVERAGE OF REALIZED REVENUES FROM THE PRIOR THREE YEARS.**

**WHEREAS**, the COVID-19 pandemic had an adverse effect on the anticipated municipal revenues in the 2020 municipal current and utility fund budgets; and

**WHEREAS**, Section 1 of P.L. 2020, c.74 amended N.J.S.A. 40A:4-26 authorized the Director of the Division of Local Government Services (“Division”) to promulgate new standards for the anticipation of COVID-19 affected revenues in the FY2021 budget, and, if necessary, in future years; and

**WHEREAS**, for FY2021, the Director authorizes the use of a three-year average for the calculation of affected revenues; and

**WHEREAS**, the Chief Financial Officer of the Township of West Caldwell, certifies that the following Swimming Pool Utility revenues were affected in 2020 by the COVID-19 pandemic and that the 3-year average of the amounts realized in 2018-2020 be anticipated in the introduced budget for 2021;

<u>Revenue Category</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Average</u>
Membership Fees	\$452,772.00	\$448,667.00	\$336,602.00	\$412,680.33
Miscellaneous	46,451.05	52,856.71	12,238.95	37,182.23

**NOW, THEREFORE BE IT RESOLVED** by the Governing Body of the Township of West Caldwell, County of Essex, State of New Jersey, that the above referenced revenues be anticipated using the 3-year average as permitted by the amendments to 40A:4-26, adopted by the P.L. 2020, c. 74.

**BE IT FURTHER RESOLVED**, that the Municipal Clerk shall upload a certified copy of this resolution on the FAST System for the Director of the Division of Local Government Services.

No. 21-140  
By: Councilman Wolsky

**SUBJECT: RESOLUTION – AUTHORIZING AN EXECUTIVE SESSION FROM WHICH THE PUBLIC IS EXCLUDED.**

**WHEREAS**, The Township of West Caldwell (the “Township” or the “public body” has been duly created and is validly existing as a public body corporate and politic of the State of New Jersey pursuant to applicable laws of the State of New Jersey; and

**MAY 18, 2021**

**WHEREAS**, The Township constitutes a “public body” as such term is defined in the New Jersey Open Public Meetings Act, constituting Chapter 231 of the Pamphlet Laws of 1975 of the State of New Jersey, N.J.S.A. 10:4-6 et seq. and the acts amendatory thereof and supplemental thereto (the “Open Public Meetings Act”); and

**WHEREAS**, the Open Public Meetings Act permits a public body, as such term is defined therein, to exclude members of the public from portions of any “meeting”, as such term is defined therein including N.J.S.A. 10:4-12(b) et seq., under certain limited circumstances which include, but are not limited to, (a) a discussion of pending or anticipated litigation in which the public body is or may become a party, or (b) a discussion of any matters which fall within the attorney-client privilege, or (c) a discussion of a collective bargaining agreement including the negotiation of the terms and conditions thereof, or (d) a discussion regarding the purchase, acquisition or lease of real property with public funds or (e) a discussion of involving the employment, appointment or termination of employment of an existing or prospective public officer or employee; and

**WHEREAS**, the governing body of the Township has determined that and is of the opinion that such circumstances presently exist that permit the governing body of the Township to discuss the matters set forth in this Resolution in executive session; and

**WHEREAS**, the matters set forth in this Resolution are within the exceptions and the limited circumstances set forth in N.J.S.A. 10:4-12(b) et seq., the governing body of the Township desires to conduct a portion of the meeting in an executive session from which members of the public will be excluded.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWNSHIP OF WEST CALDWELL**, in accordance with the provisions of The Open Public Meetings Act, that the governing body of the Township hereby determines to conduct a portion of the meeting in an executive session from which members of the public will be excluded in accordance with the provisions of Open Public Meetings Act; and

**BE IT FURTHER RESOLVED**, that the aforementioned executive session will be limited to matters relating to the following items and which matters involve, as applicable, pending and anticipated litigation involving or expected to involve the Township, matters which fall within the attorney-client privilege, matters regarding the discussion of a collective bargaining agreement, matters relating to purchase, acquisition or lease of real property with public funds or matters relating to personnel:

Potential Litigation – Amazon 10 Patton Drive

Potential Litigation – Borough of Caldwell; Caldwell Sewer Utility and others

**BE IT FURTHER RESOLVED**, that the minutes of each executive session will be prepared and maintained by the Township and with regard to each of the matters discussed in executive session; and

**BE IT FURTHER RESOLVED**, that the minutes relating to a particular matter discussed will be made available to members of the public – (a) at such time as the matter no longer requires confidentiality as permitted by applicable laws, (b) upon the completion of a pending or anticipated litigation, or (c) upon such matter no longer falling within the attorney-client privilege, (d) upon the completion of a collective bargaining agreement including the negotiation of the terms and conditions thereof, or (e) upon the completion of a purchase, acquisition or lease of real property with public funds, or (f) as such disclosure may otherwise may be required by the Open Public Meetings Act.

It was regularly moved by Council President Crudele, seconded by Councilman Hladik that the twelve Resolutions listed be adopted.

Mayor Tempesta asked if there were any comments on the consent agenda from Council or the public. There were none.

Mayor Tempesta asked for a second time if anyone had comments on any of the consent agenda items. There were none.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

#### **COMMITTEE REPORTS:**

#### **FINANCE:**

It was regularly moved by Councilman Crudele, seconded by Councilman Cecere that the following resolution be adopted.

No. 20-141

By: Councilman Crudele

**SUBJECT: RESOLUTION – INTRODUCTION OF THE 2021 BUDGET.**

**BE IT RESOLVED**, that the following statements of revenues and appropriations attached hereto constitute the local Budget of the Township of West Caldwell, Essex County, New Jersey for the year 2021.

**BE IT FURTHER RESOLVED**, that said Budget be published in *The Progress* in the issue of May 27, 2021 and that a hearing on the Budget will be held in the public meeting room, 30 Clinton Road, West Caldwell, NJ on June 15, 2021 at 7:15 pm at which time and place discussions to said Budget and Tax

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Resolution for the year 2021 may be presented by taxpayers or other interested persons.

Mayor Tempesta stated that the public hearing for the 2021 municipal budget will be June 15, 2021 at 7:15 pm.

Upon Mayor Tempesta's request, Administrator/CFO Baltycki reported that the 2021 municipal budget will be \$21,890,045.50 with an average cost to the taxpayer of \$7.55 per month.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

Administrator Baltycki was thanked by the Governing Body for her hard work on the budget, along with the department heads.

There will be an electronics recycling date of June 12, 2021 in the municipal parking lot at 30 Clinton Road from 9 am until 12 noon.

**PARKS AND RECREATION:**

Councilman Cecere reported there will be a bike safety event for 3<sup>rd</sup> and 4<sup>th</sup> graders on Saturday, May 22 at 9 am and 11 am. On Memorial Day, there will be a procession of police department, fire department and West Essex First Aid Squad rigs to Crane Park at 10 am. Attendees may park in the Essex County College parking lot. Councilman Cecere reported that it has been 11 years since Colonel Jhn McHugh died in the service of his country and he hoped that every resident would reflect on his sacrifice.

Councilman Cecere reminded residents that every street sign in West Caldwell that has a star on it, means that someone who grew up on that street paid the ultimate sacrifice in war.

Councilman Cecere also asked for prayers for the family of Patricia Pompeo who passed away this past weekend.

**TECHNOLOGY AND SHARED SERVICES:**

Councilman Hladik reported that the Caldwell/West Caldwell Board of Education has the shared services agreement that Attorney Paul Jemas presented to the Board for Harrison School Field. The Board of Health reported that the Covid cases are down considerably.

Councilman Hladik thanked his wife on their 20 year wedding anniversary.

**LEGAL AND PERSONNEL:**

Councilman Wolsky asked Clerk Donovan to read the following ordinance by title: No. 1838 "AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 20 "ZONING" TO CREATE A NEW SUBSECTION 9F "R-10 PLANNED RESIDENCE OVERLAY DISTRICT" AND TO SET FORTH THE STANDARDS AND CRITERIA APPLICABLE THERETO.

**WHEREAS**, the Township of West Caldwell has a constitutional obligation to create a realistic opportunity for the construction of its fair share of the region's need for affordable housing; and

**WHEREAS**, the Township Council desires to create a realistic opportunity for the creation of affordable housing within the municipality; and

**WHEREAS**, the Township voluntarily brought a timely declaratory judgment action pursuant to the procedures set forth by the Supreme Court in *In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1* (2015) ("Mount Laurel IV") seeking approval of a Housing Element and Fair Share Plan that satisfies the Borough's obligation to provide for its fair share of the regional need of low and moderate income housing; and

**WHEREAS**, after a Fairness Hearing held on September 10, 2020, by Order dated September 24, 2020, Hon. Robert H. Gardner, J.S.C. approved a settlement agreement between the Township of West Caldwell and Fair Share Housing Center, which was intended to establish the Township's affordable housing obligations; and

**WHEREAS**, pursuant to the requirements of the September 24, 2020 Order, the Township of West Caldwell intends to supplement its Zoning Ordinance to include provisions addressing West Caldwell's constitutional obligation provide for its fair share of low and moderate income housing; and

**WHEREAS**, the Township Council has determined that certain lands comprised of Block 1402, Lot 15 and Block 1500, Lot 7, known as 713 Passaic Avenue, are suited for overlay zoning to permit inclusionary residential development.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Council of the Township of West Caldwell, in the County of Essex, as follows:

Section 1: Chapter 20 of the Township Code entitled "Zoning", Subsection 5.1 entitled "Zone Districts" is

hereby amended with the new underlined text:

- R-2 Single-Family Residence District
- R-3 Single-Family Residence District
- R-3A Single-Family Residence and Cluster District
- R-3B Single-Family Residence and Continuing Care Retirement Community District
- R-3C Multiple-Family Adult Community Residence District
- R-3D Single-Family Residence and Residential Cluster District
- R-4 Single-Family Residence District
- R-5 Multi-Family Residence District
- R-6 Multi-Family Residence District
- R-7 Multi-Family Residence District
- R-8 Multi-Family Residence District
- R-9 Multi-Family Residence Overlay District
- R-10 Planned Residence Overlay District
- B-1 Special Business and Multi-Family Residence District
- B-2 Planned Shopping Center District
- B-3 General Business District
- M-1 Limited Manufacturing District
- M-2 Limited Industry and Research Laboratory District
- OP Office and Professional Building District
- OS Open Space District

Section 2: Chapter 20 of the Township Code entitled “Zoning”, is amended and supplemented with a new Subsection 9F entitled “Planned Residence Overlay District” to read as follows:

§20-9F R-10 PLANNED RESIDENCE OVERLAY DISTRICT.

The following standards shall apply to development within the R-10 District. When the standards herein conflict with other provisions of Chapter 20, the standards herein shall apply.

§20-9F.1 Application Requirements.

- a. Any application for development for any portion or the entirety of the R-10 District shall be submitted as a planned development, in the nature of a preliminary site plan application. Such application shall describe any phasing of the proposed project, together with all on-site and off-site improvements needed to support such phases. The application for preliminary site plan approval may also include a request for final approvals with respect to such phase or phases. The following shall apply:
  - 1. Development within the R-10 District shall be subject to the requirements of the district and to the mandatory findings for planned development as required by the Municipal Land Use Law, N.J.S.A. 40:55D-45.
  - 2. Contribution of the pro rata share of off-site improvements, including, but not limited to, required roadways, traffic signals, utilities, lighting, landscaping, sidewalk/curbs and drainage.
    - (a) Off-tract improvements are required whenever an application for development requires the construction of off-tract improvements that are clearly, directly, and substantially related to or necessitated by the proposed development. The Planning Board, as the case may be, shall require as a condition of final site plan or subdivision approval that the applicant provide for such off-tract improvements. Off-tract improvements shall include water, sanitary sewer, drainage, and street improvements, including such easements as are necessary or as may otherwise be permitted by law.
    - (b) Determination of cost. When off-tract improvements are required, the Township Engineer shall calculate the cost of such improvements in accordance with the procedures for determining performance guaranty amounts in N.J.S.A. 40:55D-53.4. Such costs may include, but not be limited to, any or all costs of planning, surveying, permit acquisition, design, specification, property, and easement acquisition, bidding, construction, construction management, inspection, legal, traffic control, and other common and necessary costs of the construction of improvements. The Township Engineer shall also determine the percentage of off-tract improvements that are attributable to the applicant's development proposal and shall expeditiously report his findings to the board of jurisdiction and the applicant.
    - (c) Improvements required solely for the application's development. Where the need for an off-tract improvement is necessitated by the proposed development and no other property owners receive a special benefit thereby, or where no planned capital improvement by a governmental entity is contemplated, or the improvement is required to meet the minimum standard of the approving authority, the applicant shall be solely responsible for the cost and installation of the required off-tract improvements. The applicant shall elect to either install the off-tract improvements or pay the municipality for the cost of the installation of the required off-tract improvements.
    - (d) Improvements required for the applicant's development and benefiting others. Where the off-tract improvements would provide capacity in infrastructure in excess of the requirements in Subsection a.2.(c). above, or address an existing deficiency,

the applicant shall elect to either install the off-tract improvements, pay the pro rata share of the cost to the Township, or pay more than its pro rata share of the cost to facilitate the construction of the improvement(s) and accept future reimbursement so as to reduce its payment to an amount equal to its pro rata share. If a developer elects to address the required off-tract improvement(s) by making a payment, such payment shall be made prior to the issuance of any building permit. If the applicant elects to install the off-tract improvements or to pay more than its pro rata share of the cost of the improvements, it shall be eligible for partial reimbursement of costs of providing such excess. The calculation of excess shall be based on an appropriate and recognized standard for the off-tract improvement being constructed, including but not limited to gallonage, cubic feet per second and number of vehicles. Nothing herein shall be construed to prevent a different standard from being agreed to by the applicant and the Township Engineer. The process, procedures and calculation used in the determination of off-tract costs shall be memorialized in a PUD or developer's agreement to be reviewed and approved by the Township Attorney, who may request advice and assistance from the Township Board Attorney. Future developers benefiting from the excess capacity provided or funded by the initial developer shall be assessed in their pro rata share of off-tract improvement cost based on the same calculation used in the initial calculation. Such future developers shall pay their assessment, plus an administration fee of 2%, not to exceed \$2,000, to the Township at the time of the signing of the final plat or final site plan as a condition precedent to such signing. The Township shall forward the assessment payment to the initial developer, less any administration fee, within 90 days of such payment.

- (e) Performance guaranty. If the applicant elects to construct the improvements, the applicant shall be required to provide, as a condition of final approval, a performance guaranty for the off-tract improvements in accordance with N.J.S.A. 40:55D-53.
- (f) Certification of costs. Once the required off-tract improvements are installed and the performance bond released, the developer shall provide a certification to the Township Engineer of the actual costs of the installation. The Township Engineer shall review the certification of costs and shall either accept them, reject them or conditionally accept them. In the review of costs, the Township Engineer shall have the right to receive copies of invoices from the developer sufficient to substantiate the certification. Failure of the developer to provide such invoices within 30 days of the Township Engineer's request shall constitute forfeiture of the right of future reimbursement for improvements that benefit others.
- (g) Time limit for reimbursement. Notwithstanding any other provisions to the contrary, no reimbursement for the construction of off-tract improvements providing excess capacity shall be made after 10 years has elapsed from the date of the acceptance of the certification of costs by the Township Engineer.

§20-9F.2 Permitted Principal Uses.

- a. Golf courses.
- b. Single-family detached homes.
- c. Townhouses.
- d. Multi-family residential units within 800 feet of Passaic Avenue.
- e. A mixture of the above uses on one parcel or tract.

§20-9F.3 Permitted Accessory Uses.

- a. Private garages, storage sheds, sun decks and patios, home occupations, and private residential swimming pools related to single-family detached homes.
- b. Private garages, sun decks and patios related to townhouses.
- c. Clubhouse, storage buildings, and recreational amenities related to golf courses.
- d. Off-street parking areas.
- e. Non-commercial swimming pools, tennis courts, and other passive and active recreation facilities.
- f. Resident amenities including, but not limited to, clubhouse, clubrooms, lounges, game rooms, mail rooms, leasing office, and similar interior common resident amenities incorporated into a larger building design. However, there may be one stand-alone structure containing residential amenities.
- g. Fences and walls complying with Subsection 20-21.14.
- h. Signs.
- i. Trash enclosures.
- j. Public and private utilities.

§20-9F.4 Height, Area, Bulk and Other Requirements.

- a. Tract requirements:
  - 1. Minimum tract size – 100 acres
  - 2. Minimum tract frontage – 900 feet
  - 3. Minimum tract setback – 75 feet, which prohibits the construction of any buildings or parking lots within 75 feet of the entire tract perimeter, the only exception to this is setback are driveways and utilities.
  - 4. Minimum tract open space, which includes land left in its natural state and parks – 8%
  - 5. Maximum density based on gross acreage - 6 units per acre
- b. Lot requirements:
  - 1. Golf course standards:

- (a) Minimum lot size – 50 acres
  - (b) Minimum lot width – 750 feet
  - (c) Minimum front yard setback – 50 feet
  - (d) Minimum side yard setback, each – 30 feet
  - (e) Minimum rear yard setback – 50 feet
  - (f) Maximum height – 2 stories and 35 feet
  - (g) Maximum building coverage – 5%
  - (h) Maximum lot coverage – 10%
2. Single-family detached home standards:
- (a) Minimum lot size – 10,000 square feet
  - (b) Minimum lot width – 90 feet
  - (c) Minimum front yard setback – 25 feet  
Minimum side yard setback, each – 15 feet
  - (d) Minimum rear yard setback – 35 feet
  - (e) Maximum height – 2.5 stories and 30 feet
  - (f) Maximum building coverage – 35%
  - (g) Maximum lot coverage – 55%
3. Townhouse requirements:
- (a) Minimum lot size – 2,500 square feet
  - (b) Minimum lot width – 25 feet
  - (c) Minimum front yard setback – 25 feet
  - (d) Minimum side yard setback – 0 feet
  - (e) Minimum rear yard setback – 35 feet
  - (f) Maximum height – 2.5 stories and 30 feet
  - (g) Maximum building coverage – 45%
  - (h) Maximum lot coverage – 75%
  - (i) Maximum number of units per building – 5
4. Multi-family residential requirements:
- (a) Minimum lot size – 5 acres
  - (b) Minimum lot width – 500 feet
  - (c) Minimum front yard setback – 30 feet
  - (d) Minimum side yard setback, each – 25 feet
  - (e) Minimum rear yard setback – 35 feet
  - (f) Minimum distance between buildings – 60 feet
  - (g) Maximum height – 3 stories and 40 feet
  - (h) Maximum building coverage – 50%
  - (i) Maximum lot coverage – 80%

§20-9A.4 Affordable Housing Requirements.

- a. Fifteen percent of all rental units and 20% of all for-sale units shall be set aside for low (including very-low) and moderate income households.
- b. Affordable units shall be governed by deed restrictions ensuring long-term affordability controls in accordance with Chapter 23, Affordable Housing.
- c. The development, unit distribution, and marketing of all affordable units shall be undertaken consistent with Chapter 23, Affordable Housing, and all other applicable law, rules, and regulations, including applicable COAH regulations, the Fair Housing Act, and its requirement that at least 13% of all affordable units associated with this project be made affordable to very-low income households.
- d. The developer shall be responsible for all costs associated with the initial rental of the affordable units, and for the continuing administration of the affordable units and the preservation of the creditworthiness of the units.

§20-9A.5 Buffer.

- a. Within the minimum tract setback all existing trees and shrubs shall remain unless dead or diseased.
- b. The existing plants within the tract setback area shall be supplemented as needed to provide a year-round screen. The tract setback area shall provide, at a minimum:
  - 1. One shade tree for every 100 linear feet of buffer; and
  - 2. Two evergreen trees for every 50 linear feet of buffer.
  - 3. Existing shade and evergreen trees within the buffer area may be counted in fulfilling the required buffer planting.
- c. Buffer plants shall be the following size at the time of planting:
  - 1. Shade trees shall be planted at a minimum three-inch caliper.
  - 2. Evergreen trees shall be planted at a minimum height of six feet.
- d. No more than 25% of the plantings shall be of the same species and/or variety of plant.
- e. Proposed buffer plantings shall be arranged in a natural, staggered pattern and shall not be lined up in straight, single rows.

§20-9A.6 Parking Requirements.

- a. Parking shall be provided in accordance with Residential Site Improvement Standards for residential uses.
- b. Off-street parking shall be provided at a rate of three spaces per tee and practice putting green for golf courses.
- c. Spaces shall measure nine feet wide by 18 feet long.

- d. Up to 10% of the parking spaces may be compact parking spaces.
  - e. Parking areas shall comply with Subsection §20-23.3 and §20-23.5.
- §20-9A.7 Architecture.
- a. Buildings shall avoid long, monotonous, uninterrupted walls or roof planes. Building wall offsets, including projections such as canopies and recesses, shall be used in order to add architectural interest and variety and to relieve the visual effect of a simple, long wall. Similarly, in the case of a pitched roof, roofline offsets, dormers or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.
  - b. The maximum spacing between building wall offsets shall be 75 feet.
  - c. The minimum projection or depth of any individual vertical offset shall be one foot.
  - d. The maximum spacing between roof offsets shall be 75 feet.
  - e. The architectural treatment of the front facade shall be continued in its major features around all visibly exposed sides of a building. All sides of a building facing a public street shall be architecturally designed to be consistent with regard to style, materials, colors, and details.
  - f. Fenestration shall be architecturally compatible with the style, materials, colors, and details of the building. Windows shall be vertically proportioned.
  - g. All entrances to a building shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, etc.
  - h. Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall be screened or otherwise specially treated to be, as much as possible, inconspicuous as viewed from the public right-of-way and adjacent properties.
  - i. All rooftop mechanical equipment, inclusive of solar equipment, shall be screened from view from all vantage points at grade or below the roof.
  - j. Placement of any packaged terminal air-conditioner units within the facade is prohibited.
- §20-9A.8 Landscaping.
- a. Street trees shall be provided on average every 50 feet. Street trees shall have a caliper of three inches at installation.
  - b. Parking areas containing a row of parking stalls running in a straight line for more than 20 spaces shall provide a landscaped island between every 20 spaces. Said island shall be no less than 162 square feet and landscaped with at least one shade tree and low ground cover. Said shade tree shall have a caliper of three inches at installation.
  - c. Seventy-five percent of the perimeter of multi-family residential buildings shall be surrounded by a landscaped, planted strip at least three feet in width. Walkways leading to pedestrian entrances and driveways may cross this landscape strip.
- §20-9A.9 Open Space Standards.
- a. Open space and recreation areas provide environmental, aesthetic, recreation, and social benefits to the greater community. It is imperative to locate open space and recreation areas proximate to residential neighborhoods.
  - b. A neighborhood park shall be provided on-site when more than 500 residential units are constructed within the R-10 District.
  - c. Two neighborhood parks or one community park, as identified below, shall be provided on-site when more than 1,000 residential units are constructed within the R-10 District.
  - d. The following standards apply to neighborhood parks:
    - 1. Minimum area – 5 acres.
    - 2. Minimum park width – 300 feet.
    - 3. For every acre a minimum of 10 shade trees, 10 ornamental trees, five evergreen trees, and 150 shrubs shall be planted. Existing trees being preserved within the park may count towards this requirement.
    - 4. Pedestrian-scaled lighting shall be provided along pathways.
    - 5. One bench shall be provided for every 300 linear feet of pathway.
    - 6. A neighborhood park shall include a playground area, equipped with at least three pieces of equipment. Two pieces of equipment shall accommodate at least 8 users each and one piece of equipment shall accommodate 15 or more users. The equipment should serve at least two age group categories, which are defined 6 to 23 months, 2 to 5 years old, 5 to 12 years old, and 13 or more years old.
    - 7. If two neighborhood parks are to be constructed the second park shall provide a civic structure instead of a playground. A civic structure could include a pavilion, amphitheater or the like.
    - 8. Other park features are encouraged, such as a pathways, tennis courts, basketball courts, etc.
  - e. The following standards shall apply to community parks:
    - 1. Minimum area – 10 acres.
    - 2. Minimum park width – 500 feet.
    - 3. For every acre a minimum of 10 shade trees, 10 ornamental trees, five evergreen trees, and 150 shrubs shall be planted.
    - 4. Pedestrian-scaled lighting shall be provided along pathways.
    - 5. One bench shall be provided for every 300 linear feet of pathway.
    - 6. A community park shall include a playground, equipped with at least three pieces of equipment. Two pieces of equipment shall accommodate at least 8 users each and one piece of equipment shall accommodate 15 or more users. The equipment should serve at least two

age group categories, which are defined 6 to 23 months, 2 to 5 years old, 5 to 12 years old, and 13 or more years old.

7. A community park shall include a multi-purpose grass field.

8. Other park features are encouraged, such as a water fountain, spray park, amphitheater, pathways, tennis courts, basketball courts, etc.

f. All parks shall be connected to the greater residential community through a network of sidewalks and/or pathways.

§20-9A.10 Lighting.

a. Pedestrian walkways shall be illuminated with a minimum average of 0.5 footcandles.

b. Parking areas shall be illuminated with a minimum average of 1.0 footcandle.

c. Illumination shall not exceed 0.5 footcandles at the property line. However, this regulation shall not apply to entrance and/or exit driveways.

§20-9A.11 Trash.

a. All trash/recycling storage areas shall be enclosed on all four sides and screened. Trash may be stored inside the building.

§20-9A.12 Signs.

a. Signs shall be permitted in accordance with Subsection §20-24.2 and §20-24.3.

b. One identification sign shall be permitted per parcel, which shall be free-standing, and no more than 40 square feet in size. Said sign may be internally or externally illuminated and shall be set back at least 10 feet from any property line.

Section 3. Attachment 1 entitled “Schedule of Height, Area, Bulk and Other Requirements” is hereby amended and supplemented with new underlined text as depicted on the attached schedule.

Section 4. The Official Zoning Map shall be changed to Planned Residence Overlay District for Block 1402, Lot 15 and Block 1500, Lot 7.

Section 5. Severability.

If any section, subsection, paragraph, sentence or other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect or invalidate the remainder of the Ordinance, but shall be confined in its effect to this section, subsection, paragraph sentence or other part of this Ordinance directly involved in the controversy with respect to which said judgment shall have been rendered, and all other provisions of this Ordinance shall remain in full force and effect.

Section 6. Inconsistent Ordinances Repealed.

All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed, but only to the extent of such inconsistencies.

Section 7. Effective Date.

This Ordinance shall take effect immediately upon final adoption and publication in the manner prescribed by law, and its provisions shall apply to all building permits applied for on or after the date of adoption and publication hereof as prescribed by law.

It was regularly moved by Councilman Wolsky, seconded by Councilwoman Canale that the Ordinance be passed on first reading; that it be published and posted as a pending Ordinance in the manner required by law and that the Public Hearing be held on Tuesday, May 18, 2021.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

Councilman Wolsky asked Clerk Donovan to read the following ordinance by title: No. 1839 “AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 20 “ZONING” TO CREATE A NEW SUBSECTION 9A “R-5 MULTI-FAMILY RESIDENTIAL DISTRICT” AND TO SET FORTH THE STANDARDS AND CRITERIA APPLICABLE THERETO.

**WHEREAS**, the Township of West Caldwell has a constitutional obligation to create a realistic opportunity for the construction of its fair share of the region’s need for affordable housing; and

**WHEREAS**, the Township Council desires to create a realistic opportunity for the creation of affordable housing within the municipality; and

**WHEREAS**, the Township voluntarily brought a timely declaratory judgment action pursuant to the procedures set forth by the Supreme Court in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”) seeking approval of a Housing Element and Fair Share Plan that satisfies the Borough’s obligation to provide for its fair share of the regional need of low and moderate income housing; and

**WHEREAS**, after a Fairness Hearing held on September 10, 2020, by Order dated September 24, 2020, Hon. Robert H. Gardner, J.S.C. approved a settlement agreement between the Township of West Caldwell and Fair Share Housing Center, which was intended to establish the Township’s affordable housing obligations; and

**WHEREAS**, pursuant to the requirements of the September 24, 2020 Order, the Township of West Caldwell intends to supplement its Zoning Ordinance to include provisions addressing West Caldwell’s constitutional obligation to provide for its fair share of low and moderate income housing; and

**WHEREAS**, the Township Council has determined that certain lands comprised of Block 1700, Lot 8, known as 1120 Bloomfield Avenue, are suited for rezoning to permit inclusionary residential development.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Council of the Township of West Caldwell, in the County of Essex, as follows:

Section 1: Chapter 20 of the Township Code entitled “Zoning”, Subsection 5.1 entitled “Zone Districts” is

hereby amended with the new underlined text:

- R-2 Single-Family Residence District
- R-3 Single-Family Residence District
- R-3A Single-Family Residence and Cluster District
- R-3B Single-Family Residence and Continuing Care Retirement Community District
- R-3C Multiple-Family Adult Community Residence District
- R-3D Single-Family Residence and Residential Cluster District
- R-4 Single-Family Residence District
- R-5 Multi-Family Residence District
- B-1 Special Business and Multi-Family Residence District
- B-2 Planned Shopping Center District
- B-3 General Business District
- M-1 Limited Manufacturing District
- M-2 Limited Industry and Research Laboratory District
- OP Office and Professional Building District
- OS Open Space District

Section 2: Chapter 20 of the Township Code entitled “Zoning”, is amended and supplemented with a new Subsection 9A entitled “R-5 Multi-Family Residence District” to read as follows:

§20-9A R-5 MULTI-FAMILY RESIDENCE DISTRICT.

The following standards shall apply to development within the R-5 District. When the standards herein conflict with other provisions of Chapter 20, the standards herein shall apply.

§20-9A.1 Permitted Principal Uses.

- f. Multi-family residential units.

§20-9A.2 Permitted Accessory Uses.

- a. First floor or ground parking incorporated into the building design and off-street parking areas.
- b. Resident amenities including, but not limited to, clubrooms, lounges, game rooms, mail rooms, leasing office, and similar interior common resident amenities incorporated into a larger building design. These accessory uses shall not be in stand-alone structures.
- c. Fences and walls complying with Subsection 20-21.14.
- d. Signs.
- e. Trash enclosures.
- f. Public and private utilities.

§20-9A.3 Height, Area, Bulk and Other Requirements.

- c. Height, area, bulk and other requirements shall conform with the provisions of Subsection 20-5.4.
- d. The maximum density shall be 30 units to the acre.

§20-9A.4 Affordable Housing Requirements.

- e. Twenty percent of all units shall be set aside for low (including very-low) and moderate income households, regardless of tenure, for all new multi-family residential developments of five units or more. The mandatory set aside shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more.
- f. Based on a maximum density of 30 units per acre and the 20% mandatory set-aside, the affordable housing yield will be a total of 24 units. A total of four such units shall be set aside for very low-income households.
- g. Affordable units shall be governed by deed restrictions ensuring long-term affordability controls in accordance with Chapter 23, Affordable Housing.
- h. The development, unit distribution, and marketing of all affordable units shall be undertaken consistent with Chapter 23, Affordable Housing, and all other applicable law, rules, and regulations, including applicable COAH regulations, the Fair Housing Act, and its requirement that at least 13% of all affordable units associated with this project be made affordable to very-low income households.
- i. All affordable housing units shall ultimately be rental. The developer shall be responsible for all costs associated with the initial rental of the affordable units, and for the continuing administration of the affordable units and the preservation of the creditworthiness of the units.

§20-9A.5 Buffer.

- f. A buffer shall be provided along single-family detached homes in the R-4 District.
- g. Said buffer shall consist of either a solid six-foot-tall fence or a five-foot-wide evergreen buffer that is six-feet-tall.

§20-9A.6 Parking Requirements.

- f. Parking shall be provided in accordance with Residential Site Improvement Standards.
- g. Spaces shall measure 9 feet wide by 18 feet long.
- h. Up to 10% of the parking spaces may be compact parking spaces.
- i. Parking areas shall comply with Subsection §20-23.3 and §20-23.5.

§20-9A.7 Architecture.

- k. Buildings shall avoid long, monotonous, uninterrupted walls or roof planes. Building wall offsets, including projections such as canopies and recesses, shall be used in order to add architectural interest and variety and to relieve the visual effect of a simple, long wall. Similarly, in the case of a pitched roof, roofline offsets, dormers or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.

- l. The maximum spacing between building wall offsets shall be 75 feet.
- m. The minimum projection or depth of any individual vertical offset shall be one foot.
- n. The maximum spacing between roof offsets shall be 75 feet.
- o. The architectural treatment of the front facade shall be continued in its major features around all visibly exposed sides of a building. All sides of a building facing a public street shall be architecturally designed to be consistent with regard to style, materials, colors, and details.
- p. Fenestration shall be architecturally compatible with the style, materials, colors, and details of the building. Windows shall be vertically proportioned.
- q. All entrances to a building shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, etc.
- r. Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall be screened or otherwise specially treated to be, as much as possible, inconspicuous as viewed from the public right-of-way and adjacent properties.
- s. All rooftop mechanical equipment, inclusive of solar equipment, shall be screened from view from all vantage points at grade or below the roof.
- t. Placement of any packaged terminal air-conditioner units within the facade is prohibited.

§20-9A.8 Landscaping.

- d. Street trees shall be provided on average every 50 feet. Street trees shall have a caliper of three inches at installation.
- e. Parking areas containing a row of parking stalls running in a straight line for more than 20 spaces shall provide a landscaped island between every 20 spaces. Said island shall be no less than 162 square feet and landscaped with at least one shade tree and low ground cover. Said shade tree shall have a caliper of three inches at installation.
- f. Seventy-five percent of the perimeter of the building shall be surrounded by a landscaped, planted strip at least three feet in width. Walkways leading to pedestrian entrances and driveways may cross this landscape strip.

§20-9A.9 Lighting.

- d. Pedestrian walkways shall be illuminated with a minimum average of 0.5 footcandles.
- e. Parking areas shall be illuminated with a minimum average of 1.0 footcandle.
- f. Illumination shall not exceed 0.5 footcandles at the property line. However, this regulation shall not apply to entrance and/or exit driveways.

§20-9A.10 Trash.

- b. All trash/recycling storage areas shall be enclosed on all four sides and screened. Trash may be stored inside the building.

§20-9A.11 Signs.

- c. Signs shall be permitted in accordance with Subsection §20-24.2 and §20-24.3.
- d. One identification sign shall be permitted per parcel, which shall be free-standing, and no more than 20 square feet in size. Said sign may be internally or externally illuminated and shall be set back at least 10 feet from any property line.

Section 3. Attachment 1 entitled “Schedule of Height, Area, Bulk and Other Requirements” is hereby amended and supplemented with new underlined text as depicted on the attached schedule.

Section 4. The Official Zoning Map shall be changed to R-5 Multi-Family Residence District for Block 1700, Lot 8.

Section 5. Severability

If any section, subsection, paragraph, sentence or other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect or invalidate the remainder of the Ordinance, but shall be confined in its effect to this section, subsection, paragraph sentence or other part of this Ordinance directly involved in the controversy with respect to which said judgment shall have been rendered, and all other provisions of this Ordinance shall remain in full force and effect.

Section 6. Inconsistent Ordinances Repealed.

All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed, but only to the extent of such inconsistencies.

Section 7. Effective Date.

This Ordinance shall take effect immediately upon final adoption and publication in the manner prescribed by law, and its provisions shall apply to all building permits applied for on or after the date of adoption and publication hereof as prescribed by law.

Attachment 1

**Schedule of Height, Area, Bulk and Other Requirements**

(Subsection 20-5.4)

Zoning Ordinance

Township of West Caldwell

(Ord. No. 890 § 20-5.4; Ord. No. 1209 § 5; Ord. No. 1283 § 7; Ord. No. 1464; Ord. No. 1561 § 1; Ord. No. 1639 § 3; Ord. No. 1729 § 1; Ord. No. 1797-2017 § 12; Ord. No. 1802-2017)

<b>ZONE DISTRICT</b>	<b>R-2</b>	<b>R-3/R-3A/R-3B</b>	<b>R-3C</b>	<b>R-3D</b>	<b>R-4</b>	<b><u>R-5</u></b>	<b>B-1</b>	<b>B-2</b>	<b>B-3</b>	<b>M-1</b>	<b>M-2</b>	<b>OP</b>
<b>LOT</b>												
Area: Min. Square Feet	17,500	14,000	4 Acres	174,240	10,500	<u>4</u> Acres	5,000	15 Acres	20,000	80,000 <sup>(16)</sup>	5 Acres	3 Acres
Depth: Min. Feet <sup>(1)</sup>	140	140	330	300	140	<u>600</u>	100	500	200	400 <sup>(17)</sup>	400	400
Width: Min. Feet	125	100	370	500	75	<u>200</u>	50	500	100	200	400	250
<b>YARDS</b> <sup>(2)</sup>												
Front: Min. Feet	40	40	50 <sup>(10)</sup>	50	40	<u>40</u>	25 <sup>(3)</sup>	150	75	50	100	75
Rear: Min. Feet	50	50	100	40	50	<u>40</u>	25	100	60	60	80	150
Side: Min. Quantity	2	2	2 side yards	2	2	<u>2</u>	1	2	2	2	2	2
Min. Feet (each)	15 <sup>(4)</sup>	10 <sup>(4)</sup>	50 feet minimum for each side yard with combined total of both side yards not less than 140 feet.	35	10 <sup>(4)</sup>	<u>40</u>	15	50	15	40	70	25
Min. % Lot Width <sup>(5)</sup>	35%	30%	--		30%		35%	25%	35%	40% <sup>(18)</sup>	40%	25%
Buffer Depth: Min. Feet <sup>(6)</sup>	--	--	20 <sup>(11)</sup>	20	--		10	30	15	30	30	30
<b>BUILDING</b>												
Height: Max. Feet <sup>(2)</sup>	35	35	35 <sup>(12)</sup>	35	35	<u>50</u>	28	28	28	35	35	28
Width: Max. Feet			230									
Max. Stories <sup>(2)</sup>	2 ½	2 ½	2 <sup>(13)</sup>	2 ½	2 ½	<u>4</u>	2	2	2	2	2	2
Floor Area: Min Square Feet	1,400	1,400	N/A	--	1,200		--	--	--	--	--	--
Coverage: Max. Bldg. <sup>(7)</sup> Coverage	30%	30%	40%	40%	30%	<u>60%</u>	30%	30%	25%	30% <sup>(19)</sup>	35%	20%
Max Lot <sup>(8)</sup> Coverage	35%	40%	65%	65%	55%	<u>90%</u>	75%	90%	90%	75%	75%	50%
Dist. Restrict: Min. Feet <sup>(9)</sup>	--	--	N/A	--	--		35	50	50	85	100	75

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**NOTES:**

- (1) Except that the township agency may grant an exception, pursuant to N.J.S.A. 40:55D-51, to permit a reduction in minimum lot depth by an amount not exceeding ten (10%) percent of the depth, provided that such lot otherwise fully conforms with minimum lot width and minimum lot area requirements.
- (2) Refer to subsection 20-5.4c.
- (3) Except that where the depth of the zone district is more than one hundred fifty (150) feet, then the front yard shall not be less than fifty (50) feet.
- (4) Except that where a side yard abuts the rear property line of one (1) or more residential properties, then such side yard shall not be less than thirty (30%) percent of the minimum required lot width.
- (5) Aggregate width of both side yards combined, as a percentage of lot width measured at front setback line of the principal building.
- (6) Minimum depth of buffer area along property line adjoining, or within, any residence district pursuant to subsection 20-21.1.
- (7) Maximum building coverage on the property, as defined under Section 18A-5.
- (8) Maximum lot coverage on the property, as defined under Section 18A-5.
- (9) Minimum distance from the principal building to the boundary line of any residence district.
- (10) No more than one-third (1/3) of building frontage shall be set back fifty (50) feet, and the remainder shall be set back no less than eighty (80) feet.
- (11) Wooded and landscaped buffers shall be provided for both side yards in accordance with subsection 20-21.1.
- (12) A parapet wall, not exceeding two (2) feet, is permitted and shall not be included in the calculation of building height.
- (13) Residential stories above ground-level parking.
- (14) In the B-2 Zone District, one (1) foot of additional building height is permitted with every additional twenty-five (25) feet of front yard setback over the minimum front yard setback of one hundred fifty (150) feet, up to a maximum height of thirty-five (35) feet.
- (15) A second permitted principal building in the B-2 Zone District shall comply with all setback requirements of the zone, except that the front yard setback minimum requirement for any second permitted principal building in the B-2 Zone District shall be sixty (60) feet.
- (16) Self-Storage facilities shall be permitted as a conditional use in the M-1 Limited Manufacturing District only, subject to the following condition: the minimum lot area shall be 250,000 square feet.
- (17) Self-Storage facilities shall be permitted as a conditional use in the M-1 Limited Manufacturing District only, subject to the following condition: the minimum lot frontage shall be 600 feet.
- (18) A pre-existing structure to be utilized as a self-storage facility shall be permitted to have a minimum lot width percentage of 15% provided that the footprint of the preexisting structure is not being expanded in connection with the use of the structure as a self-storage facility.
- (19) A pre-existing structure to be utilized as a self-storage facility shall be permitted to have a maximum building coverage of 40% provided that the footprint of the pre-existing structure is not being expanded in connection with the use of the structure as a self-storage facility.

It was regularly moved by Councilman Wolsky, seconded by Councilwoman Canale that the Ordinance be passed on first reading; that it be published and posted as a pending Ordinance in the manner required by law and that the Public Hearing be held on Tuesday, May 18, 2021.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

Councilman Wolsky asked Clerk Donovan to read the following ordinance by title: No. 1840 “AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 20 “ZONING” TO CREATE A NEW SUBSECTION 9B “R-6 MULTI-FAMILY RESIDENTIAL DISTRICT” AND TO SET FORTH THE STANDARDS AND CRITERIA APPLICABLE THERETO.

**WHEREAS**, the Township of West Caldwell has a constitutional obligation to create a realistic opportunity for the construction of its fair share of the region’s need for affordable housing; and

**WHEREAS**, the Township Council desires to create a realistic opportunity for the creation of affordable housing within the municipality; and

**WHEREAS**, the Township voluntarily brought a timely declaratory judgment action pursuant to the procedures set forth by the Supreme Court in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”) seeking approval of a Housing Element and Fair Share Plan that satisfies the Borough’s obligation to provide for its fair share of the regional need of low and moderate income housing; and

**WHEREAS**, after a Fairness Hearing held on September 10, 2020, by Order dated September 24, 2020, Hon. Robert H. Gardner, J.S.C. approved a settlement agreement between the Township of West Caldwell and Fair Share Housing Center, which was intended to establish the Township’s affordable housing obligations; and

**WHEREAS**, pursuant to the requirements of the September 24, 2020 Order, the Township of West Caldwell intends to supplement its Zoning Ordinance to include provisions addressing West Caldwell’s constitutional obligation to provide for its fair share of low and moderate income housing; and

**WHEREAS**, the Township Council has determined that certain lands comprised of Block 1600, Lots 11,12, and 22 known as 1085-1091 Bloomfield Avenue and 204 Clinton Road, are suited for rezoning to permit inclusionary residential development.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Council of the Township of West Caldwell, in the County of Essex, as follows:

Section 1: Chapter 20 of the Township Code entitled “Zoning”, Subsection 5.1 entitled “Zone Districts” is hereby amended with the new underlined text:

- R-2 Single-Family Residence District
- R-3 Single-Family Residence District
- R-3A Single-Family Residence and Cluster District
- R-3B Single-Family Residence and Continuing Care Retirement Community District
- R-3C Multiple-Family Adult Community Residence District
- R-3D Single-Family Residence and Residential Cluster District
- R-4 Single-Family Residence District
- R-5 Multi-Family Residence District
- R-6B-1 Multi-Family Residence District
- Special Business and Multi-Family Residence District
- B-2 Planned Shopping Center District
- B-3 General Business District
- M-1 Limited Manufacturing District
- M-2 Limited Industry and Research Laboratory District
- OP Office and Professional Building District
- OS Open Space District

Section 2: Chapter 20 of the Township Code entitled “Zoning”, is amended and supplemented with a new Subsection 9B entitled “R-6 Multi-Family Residence District” to read as follows:

§20-9B R-6 MULTI-FAMILY RESIDENCE DISTRICT.

The following standards shall apply to development within the R-6 District. When the standards herein conflict with other provisions of Chapter 20, the standards herein shall apply.

§20-9B.1 Permitted Principal Uses.

- g. Multi-family residential units, townhouses and stacked townhomes. Stacked townhomes shall be defined as a one-family unit in a row of three such units, where units are stacked on each other. Units may be multi-level; however; all units shall have common fire-resistant walls and have direct access from the outside.

§20-9B.2 Permitted Accessory Uses.

- g. First floor or ground parking incorporated into the building design and off-street parking areas.
- h. Resident amenities including, but not limited to, clubrooms, lounges, game rooms, mail rooms, leasing office, and similar interior common resident amenities incorporated into a larger building design. These accessory uses shall not be in stand-alone structures.
- i. Fences and walls complying with Subsection 20-21.14.

- j. Signs.
  - k. Trash enclosures.
  - l. Public and private utilities.
- §20-9B.3 Height, Area, Bulk and Other Requirements.
- e. Height, area, bulk and other requirements shall conform with the provisions of Subsection 20-5.4.
  - f. For purposes of determining yards, Bloomfield Avenue shall be referred to as a front yard and Clinton Avenue shall be referred to as a rear yard.
  - g. The maximum density shall be 12 units to the acre.
- §20-9B.4 Affordable Housing Requirements.
- j. Twenty percent of all units shall be set aside for low (including very-low) and moderate income households, regardless of tenure, for all new multi-family residential developments of five units or more. The set-aside shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more.
  - k. Based on a maximum density of 12 units per acre and the 20% mandatory set-aside, the affordable housing yield will be four units. One of these units shall be set aside for very- low income households.
  - l. Affordable units shall be governed by deed restrictions ensuring long-term affordability controls in accordance with Chapter 23, Affordable Housing.
  - m. The development, unit distribution, and marketing of all affordable units shall be undertaken consistent with Chapter 23, Affordable Housing, and all other applicable law, rules, and regulations, including applicable COAH regulations, the Fair Housing Act, and its requirement that a at least 13% of all affordable units associated with this project be made affordable to very-low income households.
  - n. The developer shall be responsible for all costs associated with the initial rental of the affordable units, and for the continuing administration of the affordable units and the preservation of the creditworthiness of the units.
- §20-9B.5 Parking Requirements.
- j. Parking shall be provided in accordance with Residential Site Improvement Standards.
  - k. Spaces shall measure 9 feet wide by 18 feet long.
  - l. Parking areas shall comply with Subsection §20-23.3 and §20-23.5.
- §20-9B.6 Architecture.
- u. Buildings shall avoid long, monotonous, uninterrupted walls or roof planes. Building wall offsets, including projections such as canopies and recesses, shall be used in order to add architectural interest and variety and to relieve the visual effect of a simple, long wall. Similarly, in the case of a pitched roof, roofline offsets, dormers or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.
  - v. The maximum spacing between building wall offsets shall be 60 feet.
  - w. The minimum projection or depth of any individual vertical offset shall be one foot.
  - x. The maximum spacing between roof offsets shall be 60 feet.
  - y. The architectural treatment of the front facade shall be continued in its major features around all visibly exposed sides of a building. All sides of a building facing a public street shall be architecturally designed to be consistent with regard to style, materials, colors, and details.
  - z. Fenestration shall be architecturally compatible with the style, materials, colors, and details of the building. Windows shall be vertically proportioned.
  - aa. All entrances to a building shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, etc.
  - bb. Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall be screened or otherwise specially treated to be, as much as possible, inconspicuous as viewed from the public right-of-way and adjacent properties.
  - cc. All rooftop mechanical equipment, inclusive of solar equipment, shall be screened from view from all vantage points at grade or below the roof.
  - dd. Placement of any packaged terminal air-conditioner units within the facade is prohibited.
- §20-9B.7 Landscaping.
- g. Street trees shall be provided on average every 50 feet. Street trees shall have a caliper of three inches at installation.
  - h. Parking areas containing a row of parking stalls running in a straight line for more than 20 spaces shall provide a landscaped island between every 20 spaces. Said island shall be no less than 162 square feet and landscaped with at least one shade tree and low ground cover. Said shade tree shall have a caliper of three inches at installation.
  - i. Parking spaces within 25 feet of an adjacent residential property line shall be screened with a six-foot-tall fence or evergreen trees of at least four feet in height to shield vehicular headlights.
  - j. Twenty-five percent of the perimeter of the building shall be surrounded by a landscaped, planted strip at least three feet in width. Walkways leading to pedestrian entrances and driveways may cross this landscape strip.
- §20-9B.8 Lighting.
- g. Pedestrian walkways shall be illuminated with a minimum average of 0.5 footcandles.
  - h. Parking areas shall be illuminated with a minimum average of 1.0 footcandle.

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- i. Illumination shall not exceed 0.5 footcandles at the property line. However, this regulation shall not apply to entrance and/or exit driveways.

§20-9B.9 Trash.

- c. All trash/recycling storage areas shall be enclosed on all four sides and screened. Trash may be stored inside the building.

§20-9B.10 Signs.

- e. Signs shall be permitted in accordance with Subsection §20-24.2 and §20-24.3.
- f. One identification sign shall be permitted per parcel, which shall be free-standing, and no more than 20 square feet in size. Said sign may be internally or externally illuminated and shall be set back at least 10 feet from any property line.

Section 3. Attachment 1 entitled “Schedule of Height, Area, Bulk and Other Requirements” is hereby amended and supplemented with new underlined text as depicted on the attached schedule.

Section 4. The Official Zoning Map shall be changed to R-6 Multi-Family Residence District for Block 1600, Lots 11,12, and 22.

Section 5. Severability

If any section, subsection, paragraph, sentence or other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect or invalidate the remainder of the Ordinance, but shall be confined in its effect to this section, subsection, paragraph sentence or other part of this Ordinance directly involved in the controversy with respect to which said judgment shall have been rendered, and all other provisions of this Ordinance shall remain in full force and effect.

Section 6. Inconsistent Ordinances Repealed.

All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed, but only to the extent of such inconsistencies.

Section 7. Effective Date.

This Ordinance shall take effect immediately upon final adoption and publication in the manner prescribed by law, and its provisions shall apply to all building permits applied for on or after the date of adoption and publication hereof as prescribed by law.

*Attachment 1*  
**Schedule of Height, Area, Bulk and Other Requirements**  
 (Subsection 20-5.4)  
 Zoning Ordinance  
 Township of West Caldwell

(Ord. No. 890 § 20-5.4; Ord. No. 1209 § 5; Ord. No. 1283 § 7; Ord. No. 1464; Ord. No. 1561 § 1; Ord. No. 1639 § 3; Ord. No. 1729 § 1; Ord. No. 1797-2017 § 12; Ord. No. 1802-2017)

<b>ZONE DISTRICT</b>	<b>R-2</b>	<b>R-3/R-3A/R-3B</b>	<b>R-3C</b>	<b>R-3D</b>	<b>R-4</b>	<b>R-5</b>	<b><u>R-6</u></b>	<b>B-1</b>	<b>B-2</b>	<b>B-3</b>	<b>M-1</b>	<b>M-2</b>	<b>OP</b>
<b>LOT</b>													
Area: Min. Square Feet	17,500	14,000	4 Acres	174,240	10,500	4 Acres	<u>75,000</u>	5,000	15 Acres	20,000	80,000 <sup>(16)</sup>	5 Acres	3 Acres
Depth: Min. Feet <sup>(1)</sup>	140	140	330	300	140	600	<u>500</u>	100	500	200	400 <sup>(17)</sup>	400	400
Width: Min. Feet	125	100	370	500	75	200	<u>100</u>	50	500	100	200	400	250
<b>YARDS <sup>(2)</sup></b>													
Front: Min. Feet	40	40	50 <sup>(10)</sup>	50	40	40	<u>40</u>	25 <sup>(3)</sup>	150	75	50	100	75
Rear: Min. Feet	50	50	100	40	50	40	<u>150</u>	25	100	60	60	80	150
Side: Min. Quantity	2	2	2 side yards	2	2	2	<u>2</u>	1	2	2	2	2	2
Min. Feet (each)	15 <sup>(4)</sup>	10 <sup>(4)</sup>	50 feet minimum for each side yard with combined total of both side yards not less than 140 feet.	35	10 <sup>(4)</sup>	40	<u>20</u>	15	50	15	40	70	25
Min. % Lot Width <sup>(5)</sup>	35%	30%	--		30%			35%	25%	35%	40% <sup>(18)</sup>	40%	25%
Buffer Depth: Min. Feet <sup>(6)</sup>	--	--	20 <sup>(11)</sup>	20	--			10	30	15	30	30	30
<b>BUILDING</b>													
Height: Max. Feet <sup>(2)</sup>	35	35	35 <sup>(12)</sup>	35	35	50	<u>50</u>	28	28	28	35	35	28
Width: Max. Feet			230										
Max. Stories <sup>(2)</sup>	2 ½	2 ½	2 <sup>(13)</sup>	2 ½	2 ½	4	<u>4</u>	2	2	2	2	2	2
Floor Area: Min Square Feet	1,400	1,400	N/A	--	1,200			--	--	--	--	--	--
Coverage: Max. Bldg. <sup>(7)</sup> Coverage	30%	30%	40%	40%	30%	60%	<u>60%</u>	30%	30%	25%	30% <sup>(19)</sup>	35%	20%
Max Lot <sup>(8)</sup> Coverage	35%	40%	65%	65%	55%	90%	<u>85%</u>	75%	90%	90%	75%	75%	50%
Dist. Restrict: Min. Feet <sup>(9)</sup>	--	--	N/A	--	--			35	50	50	85	100	75

**MAY 18, 2021**

**NOTES:**

- (1) Except that the township agency may grant an exception, pursuant to N.J.S.A. 40:55D-51, to permit a reduction in minimum lot depth by an amount not exceeding ten (10%) percent of the depth, provided that such lot otherwise fully conforms with minimum lot width and minimum lot area requirements.
- (2) Refer to subsection 20-5.4c.
- (3) Except that where the depth of the zone district is more than one hundred fifty (150) feet, then the front yard shall not be less than fifty (50) feet.
- (4) Except that where a side yard abuts the rear property line of one (1) or more residential properties, then such side yard shall not be less than thirty (30%) percent of the minimum required lot width.
- (5) Aggregate width of both side yards combined, as a percentage of lot width measured at front setback line of the principal building.
- (6) Minimum depth of buffer area along property line adjoining, or within, any residence district pursuant to subsection 20-21.1.
- (7) Maximum building coverage on the property, as defined under Section 18A-5.
- (8) Maximum lot coverage on the property, as defined under Section 18A-5.
- (9) Minimum distance from the principal building to the boundary line of any residence district.
- (10) No more than one-third (1/3) of building frontage shall be set back fifty (50) feet, and the remainder shall be set back no less than eighty (80) feet.
- (11) Wooded and landscaped buffers shall be provided for both side yards in accordance with subsection 20-21.1.
- (12) A parapet wall, not exceeding two (2) feet, is permitted and shall not be included in the calculation of building height.
- (13) Residential stories above ground-level parking.
- (14) In the B-2 Zone District, one (1) foot of additional building height is permitted with every additional twenty-five (25) feet of front yard setback over the minimum front yard setback of one hundred fifty (150) feet, up to a maximum height of thirty-five (35) feet.
- (15) A second permitted principal building in the B-2 Zone District shall comply with all setback requirements of the zone, except that the front yard setback minimum requirement for any second permitted principal building in the B-2 Zone District shall be sixty (60) feet.
- (16) Self-Storage facilities shall be permitted as a conditional use in the M-1 Limited Manufacturing District only, subject to the following condition: the minimum lot area shall be 250,000 square feet.
- (17) Self-Storage facilities shall be permitted as a conditional use in the M-1 Limited Manufacturing District only, subject to the following condition: the minimum lot frontage shall be 600 feet.
- (18) A pre-existing structure to be utilized as a self-storage facility shall be permitted to have a minimum lot width percentage of 15% provided that the footprint of the preexisting structure is not being expanded in connection with the use of the structure as a self-storage facility.
- (19) A pre-existing structure to be utilized as a self-storage facility shall be permitted to have a maximum building coverage of 40% provided that the footprint of the pre-existing structure is not being expanded in connection with the use of the structure as a self-storage facility.

It was regularly moved by Councilman Wolsky, seconded by Councilwoman Canale that the Ordinance be passed on first reading; that it be published and posted as a pending Ordinance in the manner required by law and that the Public Hearing be held on Tuesday, May 18, 2021.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

Councilman Wolsky asked Clerk Donovan to read the following ordinance by title: No. 1841 “AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 20 “ZONING” TO CREATE A NEW SUBSECTION 9D “R-8 MULTI-FAMILY RESIDENTIAL DISTRICT” AND TO SET FORTH THE STANDARDS AND CRITERIA APPLICABLE THERETO.

**WHEREAS**, the Township of West Caldwell has a constitutional obligation to create a realistic opportunity for the construction of its fair share of the region’s need for affordable housing; and

**WHEREAS**, the Township Council desires to create a realistic opportunity for the creation of affordable housing within the municipality; and

**WHEREAS**, the Township voluntarily brought a timely declaratory judgment action pursuant to the procedures set forth by the Supreme Court in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”) seeking approval of a Housing Element and Fair Share Plan that satisfies the Borough’s obligation to provide for its fair share of the regional need of low and moderate income housing; and

**WHEREAS**, after a Fairness Hearing held on September 10, 2020, by Order dated September 24, 2020, Hon. Robert H. Gardner, J.S.C. approved a settlement agreement between the Township of West Caldwell and Fair Share Housing Center, which was intended to establish the Township’s affordable housing obligations; and

**WHEREAS**, pursuant to the requirements of the September 24, 2020 Order, the Township of West Caldwell intends to supplement its Zoning Ordinance to include provisions addressing West Caldwell’s constitutional obligation to provide for its fair share of low and moderate income housing; and

**WHEREAS**, the Township Council has determined that certain lands comprised of Block 1502, Lot 1, known as 75 Clinton Road, are suited for rezoning to permit inclusionary residential development.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Council of the Township of West Caldwell, in the County of Essex, as follows:

Section 1: Chapter 20 of the Township Code entitled “Zoning”, Subsection 5.1 entitled “Zone Districts” is hereby amended with the new underlined text:

R-2 Single-Family Residence District

R-3 Single-Family Residence District

R-3A Single-Family Residence and Cluster District

R-3B Single-Family Residence and Continuing Care Retirement Community District

R-3C Multiple-Family Adult Community Residence District

R-3D Single-Family Residence and Residential Cluster District

R-4 Single-Family Residence District

R-5 Multi-Family Residence District

R-6 Multi-Family Residence District

R-7 Multi-Family Residence District

R-8 Multi-Family Residence District

B-1 Special Business and Multi-Family Residence District

B-2 Planned Shopping Center District

B-3 General Business District

M-1 Limited Manufacturing District

M-2 Limited Industry and Research Laboratory District

OP Office and Professional Building District

OS Open Space District

Section 2: Chapter 20 of the Township Code entitled “Zoning”, is amended and supplemented with a new Subsection 9D entitled “R-8 Multi-Family Residence District” to read as follows:

§20-9D R-8 MULTI-FAMILY RESIDENCE DISTRICT.

The following standards shall apply to development within the R-8 District. When the standards herein conflict with other provisions of Chapter 20, the standards herein shall apply.

§20-9D.1 Permitted Principal Uses.

- h. Multi-family residential units, including townhouses and stacked townhomes. Stacked townhomes shall be defined as a one-family unit in a row of three such units, where units are stacked on each other. Units may be multi-level; however; all units shall have common fire-resistant walls and have direct access from the outside.

§20-9D.2 Permitted Accessory Uses.

- m. Off-street parking areas.
- n. Resident amenities including, but not limited to, clubrooms, lounges, game rooms, mail rooms, leasing office, and similar interior common resident amenities incorporated into a larger building design. These accessory uses shall not be in stand-alone structures.
- o. Fences and walls complying with Subsection 20-21.14.
- p. Signs.

- q. Trash enclosures.
- r. Public and private utilities.

§20-9D.3 Height, Area, Bulk and Other Requirements.

- h. Height, area, bulk and other requirements shall conform with the provisions of Subsection 20-5.4.
- i. Due to the site's unique shape and that Kirkpatrick Lane is unimproved, the front yard shall be Clinton Road and the two remaining lot lines shall be considered side lot lines.
- j. The density shall be 11 units to the acre, with a maximum of 25 units.

§20-9D.4 Affordable Housing Requirements.

- a. Twenty percent of all units shall be set aside for low (including very-low) and moderate income households, regardless of tenure, for all new multi-family residential developments of five units or more. The set-aside shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more
- b. Based on a maximum density of 11 units per acre and the 20% mandatory set-aside, the affordable housing yield will be five units. One of these units shall be set aside for very-low income households.
- c. Affordable units shall be governed by deed restrictions ensuring long-term affordability controls in accordance with Chapter 23, Affordable Housing.
- d. The development, unit distribution, and marketing of all affordable units shall be undertaken consistent with Chapter 23, Affordable Housing, and all other applicable law, rules, and regulations, including applicable COAH regulations, the Fair Housing Act, and its requirement that at least 13% of all affordable units associated with this project be made affordable to very-low income households.
- e. The developer shall be responsible for all costs associated with the initial rental and/or sale of the affordable units, and for the continuing administration of the affordable units and the preservation of the creditworthiness of the units.

§20-9D.5 Parking Requirements.

- m. Parking shall be provided in accordance with Residential Site Improvement Standards.
- n. Spaces shall measure 9 feet wide by 18 feet long.
- o. Parking areas shall comply with Subsection §20-23.3 and §20-23.5.

§20-9D.6 Architecture.

- ee. Buildings shall avoid long, monotonous, uninterrupted walls or roof planes. Building wall offsets, including projections such as canopies and recesses, shall be used in order to add architectural interest and variety and to relieve the visual effect of a simple, long wall. Similarly, in the case of a pitched roof, roofline offsets, dormers or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.
- ff. The maximum spacing between building wall offsets shall be 60 feet.
- gg. The minimum projection or depth of any individual vertical offset shall be one foot.
- hh. The maximum spacing between roof offsets shall be 60 feet.
- ii. The architectural treatment of the front facade shall be continued in its major features around all visibly exposed sides of a building. All sides of a building facing a public street shall be architecturally designed to be consistent with regard to style, materials, colors, and details.
- jj. Fenestration shall be architecturally compatible with the style, materials, colors, and details of the building. Windows shall be vertically proportioned.
- kk. All entrances to a building shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, etc.
- ll. Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall be screened or otherwise specially treated to be, as much as possible, inconspicuous as viewed from the public right-of-way and adjacent properties.
- mm. All rooftop mechanical equipment, inclusive of solar equipment, shall be screened from view from all vantage points at grade or below the roof.
- nn. Placement of any packaged terminal air-conditioner units within the facade is prohibited.

§20-9D.7 Landscaping.

- k. Street trees shall be provided on average every 50 feet. Street trees shall have a caliper of three inches at installation.
- l. Parking areas containing a row of parking stalls running in a straight line for more than 20 spaces shall provide a landscaped island between every 20 spaces. Said island shall be no less than 162 square feet and landscaped with at least one shade tree and low ground cover. Said shade tree shall have a caliper of three inches at installation.
- m. Forty percent of the perimeter of the building shall be surrounded by a landscaped, planted strip at least three feet in width. Walkways leading to pedestrian entrances and driveways may cross this landscape strip.

§20-9D.8 Lighting.

- j. Pedestrian walkways shall be illuminated with a minimum average of 0.5 footcandles.
- k. Parking areas shall be illuminated with a minimum average of 1.0 footcandle.
- l. Illumination shall not exceed 0.5 footcandles at the property line. However, this regulation shall not apply to entrance and/or exit driveways.

§20-9D.10 Trash.

- d. All trash/recycling storage areas shall be enclosed on all four sides and screened. Trash may be stored inside the buildings/units.

§20-9D.11 Signs.

- g. Signs shall be permitted in accordance with Subsection §20-24.2 and §20-24.3.
- h. One identification sign shall be permitted per parcel, which shall be free-standing, and no more than 20 square feet in size. Said sign may be internally or externally illuminated and shall be set back at least 10 feet from any property line.

Section 3. Attachment 1 entitled “Schedule of Height, Area, Bulk and Other Requirements” is hereby amended and supplemented with new underlined text as depicted on the attached schedule.

Section 4. The Official Zoning Map shall be changed to R-8 Multi-Family Residence District for Block 1502, Lot 1.

Section 5. Severability.

If any section, subsection, paragraph, sentence or other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect or invalidate the remainder of the Ordinance, but shall be confined in its effect to this section, subsection, paragraph sentence or other part of this Ordinance directly involved in the controversy with respect to which said judgment shall have been rendered, and all other provisions of this Ordinance shall remain in full force and effect.

Section 6. Inconsistent Ordinances Repealed.

All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed, but only to the extent of such inconsistencies.

Section 7. Effective Date.

This Ordinance shall take effect immediately upon final adoption and publication in the manner prescribed by law, and its provisions shall apply to all building permits applied for on or after the date of adoption and publication hereof as prescribed by law.

*Attachment 1*  
**Schedule of Height, Area, Bulk and Other Requirements**

(Subsection 20-5.4)

Zoning Ordinance

Township of West Caldwell

(Ord. No. 890 § 20-5.4; Ord. No. 1209 § 5; Ord. No. 1283 § 7; Ord. No. 1464; Ord No. 1561 § 1; Ord. No. 1639 § 3; Ord. No. 1729 § 1; Ord. No. 1797-2017 § 12; Ord. No. 1802-2017)

<b>ZONE DISTRICT</b>	<b>R-2</b>	<b>R-3/R-3A/R-3B</b>	<b>R-3C</b>	<b>R-3D</b>	<b>R-4</b>	<b>R-5</b>	<b>R-6</b>	<b>R-7</b>	<b><u>R-8</u></b>	<b>B-1</b>	<b>B-2</b>	<b>B-3</b>	<b>M-1</b>	<b>M-2</b>	<b>OP</b>
<b>LOT</b>															
Area: Min. Square Feet	17,500	14,000	4 Acres	174,240	10,500	4 Acres	75,000	75,000	<u>2</u> acres	5,000	15 Acres	20,000	80,000 <sup>(16)</sup>	5 Acres	3 Acres
Depth: Min. Feet <sup>(1)</sup>	140	140	330	300	140	600	500	500	<u>450</u>	100	500	200	400 <sup>(17)</sup>	400	400
Width: Min. Feet	125	100	370	500	75	200	100	150	<u>180</u>	50	500	100	200	400	250
<b>YARDS</b> <sup>(2)</sup>															
Front: Min. Feet	40	40	50 <sup>(10)</sup>	50	40	40	40	40	<u>40</u>	25 <sup>(3)</sup>	150	75	50	100	75
Rear: Min. Feet	50	50	100	40	50	40		40		25	100	60	60	80	150
Side: Min. Quantity	2	2	2 side yards	2	2	2	2	2	<u>2</u>	1	2	2	2	2	2
Min. Feet (each)	15 <sup>(4)</sup>	10 <sup>(4)</sup>	50 feet minimum for each side yard with combined total of both side yards not less than 140 feet.	35	10 <sup>(4)</sup>	40	20	15	<u>15</u>	15	50	15	40	70	25
Min. % Lot Width <sup>(5)</sup>	35%	30%	--		30%					35%	25%	35%	40% <sup>(18)</sup>	40%	25%
Buffer Depth: Min. Feet <sup>(6)</sup>	--	--	20 <sup>(11)</sup>	20	--					10	30	15	30	30	30
<b>BUILDING</b>															
Height: Max. Feet <sup>(2)</sup>	35	35	35 <sup>(12)</sup>	35	35	50	40	40	<u>40</u>	28	28	28	35	35	28
Width: Max. Feet			230												
Max. Stories <sup>(2)</sup>	2 ½	2 ½	2 <sup>(13)</sup>	2 ½	2 ½	4	3	3	<u>3</u>	2	2	2	2	2	2
Floor Area: Min Square Feet	1,400	1,400	N/A	--	1,200					--	--	--	--	--	--
Coverage: Max. Bldg. <sup>(7)</sup> Coverage	30%	30%	40%	40%	30%	60%	60%	60%	<u>60%</u>	30%	30%	25%	30% <sup>(19)</sup>	35%	20%
Max Lot <sup>(8)</sup> Coverage	35%	40%	65%	65%	55%	90%	85%	90%	<u>90%</u>	75%	90%	90%	75%	75%	50%
Dist. Restrict: Min. Feet <sup>(9)</sup>	--	--	N/A	--	--					35	50	50	85	100	75

**MAY 18, 2021**

**NOTES:**

- (1) Except that the township agency may grant an exception, pursuant to N.J.S.A. 40:55D-51, to permit a reduction in minimum lot depth by an amount not exceeding ten (10%) percent of the depth, provided that such lot otherwise fully conforms with minimum lot width and minimum lot area requirements.
- (2) Refer to subsection 20-5.4c.
- (3) Except that where the depth of the zone district is more than one hundred fifty (150) feet, then the front yard shall not be less than fifty (50) feet.
- (4) Except that where a side yard abuts the rear property line of one (1) or more residential properties, then such side yard shall not be less than thirty (30%) percent of the minimum required lot width.
- (5) Aggregate width of both side yards combined, as a percentage of lot width measured at front setback line of the principal building.
- (6) Minimum depth of buffer area along property line adjoining, or within, any residence district pursuant to subsection 20-21.1.
- (7) Maximum building coverage on the property, as defined under Section 18A-5.
- (8) Maximum lot coverage on the property, as defined under Section 18A-5.
- (9) Minimum distance from the principal building to the boundary line of any residence district.
- (10) No more than one-third (1/3) of building frontage shall be set back fifty (50) feet, and the remainder shall be set back no less than eighty (80) feet.
- (11) Wooded and landscaped buffers shall be provided for both side yards in accordance with subsection 20-21.1.
- (12) A parapet wall, not exceeding two (2) feet, is permitted and shall not be included in the calculation of building height.
- (13) Residential stories above ground-level parking.
- (14) In the B-2 Zone District, one (1) foot of additional building height is permitted with every additional twenty-five (25) feet of front yard setback over the minimum front yard setback of one hundred fifty (150) feet, up to a maximum height of thirty-five (35) feet.
- (15) A second permitted principal building in the B-2 Zone District shall comply with all setback requirements of the zone, except that the front yard setback minimum requirement for any second permitted principal building in the B-2 Zone District shall be sixty (60) feet.
- (16) Self-Storage facilities shall be permitted as a conditional use in the M-1 Limited Manufacturing District only, subject to the following condition: the minimum lot area shall be 250,000 square feet.
- (17) Self-Storage facilities shall be permitted as a conditional use in the M-1 Limited Manufacturing District only, subject to the following condition: the minimum lot frontage shall be 600 feet.
- (18) A pre-existing structure to be utilized as a self-storage facility shall be permitted to have a minimum lot width percentage of 15% provided that the footprint of the preexisting structure is not being expanded in connection with the use of the structure as a self-storage facility.
- (19) A pre-existing structure to be utilized as a self-storage facility shall be permitted to have a maximum building coverage of 40% provided that the footprint of the pre-existing structure is not being expanded in connection with the use of the structure as a self-storage facility.

It was regularly moved by Councilman Wolsky, seconded by Councilwoman Canale that the Ordinance be passed on first reading; that it be published and posted as a pending Ordinance in the manner required by law and that the Public Hearing be held on Tuesday, May 18, 2021.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

Councilman Wolsky asked Clerk Donovan to read the following ordinance by title: No. 1842 “AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 20 “ZONING” TO CREATE A NEW SUBSECTION 9E “R-9 MULTI-FAMILY RESIDENTIAL OVERLAY DISTRICT” AND TO SET FORTH THE STANDARDS AND CRITERIA APPLICABLE THERETO.

**WHEREAS**, the Township of West Caldwell has a constitutional obligation to create a realistic opportunity for the construction of its fair share of the region’s need for affordable housing; and

**WHEREAS**, the Township Council desires to create a realistic opportunity for the creation of affordable housing within the municipality; and

**WHEREAS**, the Township voluntarily brought a timely declaratory judgment action pursuant to the procedures set forth by the Supreme Court in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”) seeking approval of a Housing Element and Fair Share Plan that satisfies the Borough’s obligation to provide for its fair share of the regional need of low and moderate income housing; and

**WHEREAS**, after a Fairness Hearing held on September 10, 2020, by Order dated September 24, 2020, Hon. Robert H. Gardner, J.S.C. approved a settlement agreement between the Township of West Caldwell and Fair Share Housing Center, which was intended to establish the Township’s affordable housing obligations; and

**WHEREAS**, pursuant to the requirements of the September 24, 2020 Order, the Township of West Caldwell intends to supplement its Zoning Ordinance to include provisions addressing West Caldwell’s constitutional obligation to provide for its fair share of low and moderate income housing; and

**WHEREAS**, the Township Council has determined that certain lands comprised of Block 2802, Lot 14.01, known as 246 Passaic Avenue, are suited for rezoning to permit inclusionary residential development.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Council of the Township of West Caldwell, in the County of Essex, as follows:

**Section 1:** Chapter 20 of the Township Code entitled “Zoning”, Subsection 5.1 entitled “Zone Districts” is hereby amended with the new underlined text:

- R-2 Single-Family Residence District
- R-3 Single-Family Residence District
- R-3A Single-Family Residence and Cluster District
- R-3B Single-Family Residence and Continuing Care Retirement Community District
- R-3C Multiple-Family Adult Community Residence District
- R-3D Single-Family Residence and Residential Cluster District
- R-4 Single-Family Residence District
- R-5 Multi-Family Residence District
- R-6 Multi-Family Residence District
- R-7 Multi-Family Residence District
- R-8 Multi-Family Residence District
- R-9 Multi-Family Residence Overlay District
- B-1 Special Business and Multi-Family Residence District
- B-2 Planned Shopping Center District
- B-3 General Business District
- M-1 Limited Manufacturing District
- M-2 Limited Industry and Research Laboratory District
- OP Office and Professional Building District
- OS Open Space District

**Section 2:** Chapter 20 of the Township Code entitled “Zoning”, is amended and supplemented with a new Subsection 9E entitled “R-9 Multi-Family Residence Overlay District” to read as follows:

§20-9E R-9 MULTI-FAMILY RESIDENCE OVERLAY DISTRICT.

The following standards shall apply to development within the R-9 Overlay District. When the standards herein conflict with other provisions of Chapter 20, the standards herein shall apply.

§20-9E.1 Permitted Principal Uses.

- i. Townhouses.

§20-9E.2 Permitted Accessory Uses.

- s. Off-street parking areas.
- t. Fences and walls complying with Subsection 20-21.14.
- u. Signs.
- v. Trash enclosures.
- w. Public and private utilities.

§20-9E.3 Height, Area, Bulk and Other Requirements.

- k. Height, area, bulk and other requirements shall conform with the provisions of Subsection 20-5.4.
- l. The maximum density shall be 10 units to the acre.

§20-9E.4 Affordable Housing Requirements.

- o. Twenty percent of all units shall be set aside for low (including very-low) and moderate income households, regardless of tenure, for all new multi-family residential developments of five units or more. The mandatory set aside shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more.
- p. Affordable units shall be governed by deed restrictions ensuring long-term affordability controls in accordance with Chapter 23, Affordable Housing.
- q. The development, unit distribution, and marketing of all affordable units shall be undertaken consistent with Chapter 23, Affordable Housing, and all other applicable law, rules, and regulations, including applicable COAH regulations, the Fair Housing Act, and its requirement that at least 13% of all affordable units associated with this project be made affordable to very-low income households.
- r. The developer shall be responsible for all costs associated with the initial rental of the affordable units, and for the continuing administration of the affordable units and the preservation of the creditworthiness of the units.

§20-9E.5 Buffer.

- h. A buffer shall be provided along single-family detached homes in the R-3 District.
- i. Said buffer shall consist of either a solid six-foot-tall fence or a five-foot-wide evergreen buffer that is six-feet-tall.

§20-9E.6 Parking Requirements.

- p. Parking shall be provided in accordance with Residential Site Improvement Standards.
- q. Spaces shall measure 9 feet wide by 18 feet long.
- r. Parking areas shall comply with Subsection §20-23.3 and §20-23.5.

§20-9E.7 Architecture.

- oo. Buildings shall avoid long, monotonous, uninterrupted walls or roof planes. Building wall offsets, including projections such as canopies and recesses, shall be used in order to add architectural interest and variety and to relieve the visual effect of a simple, long wall. Similarly, in the case of a pitched roof, roofline offsets, dormers or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.
- pp. The maximum spacing between building wall offsets shall be 60 feet.
- qq. The minimum projection or depth of any individual vertical offset shall be one foot.
- rr. The maximum spacing between roof offsets shall be 60 feet.
- ss. The architectural treatment of the front facade shall be continued in its major features around all visibly exposed sides of a building. All sides of a building facing a public street shall be architecturally designed to be consistent with regard to style, materials, colors, and details.
- tt. Fenestration shall be architecturally compatible with the style, materials, colors, and details of the building. Windows shall be vertically proportioned.
- uu. All entrances to a building shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, etc.
- vv. Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall be screened or otherwise specially treated to be, as much as possible, inconspicuous as viewed from the public right-of-way and adjacent properties.
- ww. All rooftop mechanical equipment, inclusive of solar equipment, shall be screened from view from all vantage points at grade or below the roof.
- xx. Placement of any packaged terminal air-conditioner units within the facade is prohibited.

§20-9E.8 Landscaping.

- n. Street trees shall be provided on average every 50 feet. Street trees shall have a caliper of three inches at installation.
- o. Parking areas containing a row of parking stalls running in a straight line for more than 20 spaces shall provide a landscaped island between every 20 spaces. Said island shall be no less than 162 square feet and landscaped with at least one shade tree and low ground cover. Said shade tree shall have a caliper of three inches at installation.

- p. Parking spaces within 25 feet of an adjacent residential property line shall be screened with a six-foot-tall fence or evergreen trees of at least four feet in height to shield vehicular headlights.
- q. Twenty-five percent of the perimeter of the building shall be surrounded by a landscaped, planted strip at least three feet in width. Walkways leading to pedestrian entrances and driveways may cross this landscape strip.

§20-9E.9 Lighting.

- m. Pedestrian walkways shall be illuminated with a minimum average of 0.5 footcandles.
- n. Parking areas shall be illuminated with a minimum average of 1.0 footcandle.
- o. Illumination shall not exceed 0.5 footcandles at the property line. However, this regulation shall not apply to entrance and/or exit driveways.

§20-9A.10 Trash.

- e. All trash/recycling storage areas shall be enclosed on all four sides and screened. Trash may be stored inside the buildings/units.

§20-9A.11 Signs.

- i. Signs shall be permitted in accordance with Subsection §20-24.2 and §20-24.3.
- j. One identification sign shall be permitted per parcel, which shall be free-standing, and no more than 15 square feet in size. Said sign may be internally or externally illuminated and shall be set back at least 10 feet from any property line.

Section 3. Attachment 1 entitled “Schedule of Height, Area, Bulk and Other Requirements” is hereby amended and supplemented with new underlined text as depicted on the attached schedule.

Section 4. The Official Zoning Map shall be changed to R-9 Multi-Family Residence Overlay District for Block 2802, Lot 14.01.

Section 5. Severability.

If any section, subsection, paragraph, sentence or other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect or invalidate the remainder of the Ordinance, but shall be confined in its effect to this section, subsection, paragraph sentence or other part of this Ordinance directly involved in the controversy with respect to which said judgment shall have been rendered, and all other provisions of this Ordinance shall remain in full force and effect.

Section 6. Inconsistent Ordinances Repealed.

All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed, but only to the extent of such inconsistencies.

Section 7. Effective Date.

This Ordinance shall take effect immediately upon final adoption and publication in the manner prescribed by law, and its provisions shall apply to all building permits applied for on or after the date of adoption and publication hereof as prescribed by law.

*Attachment 1*  
**Schedule of Height, Area, Bulk and Other Requirements**

(Subsection 20-5.4)

Zoning Ordinance

Township of West Caldwell

(Ord. No. 890 § 20-5.4; Ord. No. 1209 § 5; Ord. No. 1283 § 7; Ord. No. 1464; Ord No. 1561 § 1; Ord. No. 1639 § 3; Ord. No. 1729 § 1; Ord. No. 1797-2017 § 12; Ord. No. 1802-2017)

<b>ZONE DISTRICT</b>	<b>R-2</b>	<b>R-3/R-3A/R-3B</b>	<b>R-3C</b>	<b>R-3D</b>	<b>R-4</b>	<b>R-5</b>	<b>R-6</b>	<b>R-7</b>	<b>R-8</b>	<b><u>R-9</u></b>	<b>B-1</b>	<b>B-2</b>	<b>B-3</b>	<b>M-1</b>	<b>M-2</b>	<b>OP</b>
<b>LOT</b>																
Area: Min. Square Feet	17,500	14,000	4 Acres	174,240	10,500	4 Acres	75,000	75,000	2 acres	<u>2 acres</u>	5,000	15 Acres	20,000	80,000 <sup>(16)</sup>	5 Acres	3 Acres
Depth: Min. Feet <sup>(1)</sup>	140	140	330	300	140	600	500	500	450	<u>200</u>	100	500	200	400 <sup>(17)</sup>	400	400
Width: Min. Feet	125	100	370	500	75	200	100	150	180	<u>300</u>	50	500	100	200	400	250
<b>YARDS</b> <sup>(2)</sup>																
Front: Min. Feet	40	40	50 <sup>(10)</sup>	50	40	40	40	40	40	<u>40</u>	25 <sup>(3)</sup>	150	75	50	100	75
Rear: Min. Feet	50	50	100	40	50	40		40		<u>40</u>	25	100	60	60	80	150
Side: Min. Quantity	2	2	2 side yards	2	2	2	2	2	2	<u>2</u>	1	2	2	2	2	2
Min. Feet (each)	15 <sup>(4)</sup>	10 <sup>(4)</sup>	50 feet minimum for each side yard with combined total of both side yards not less than 140 feet.	35	10 <sup>(4)</sup>	40	20	15	15	<u>20</u>	15	50	15	40	70	25
Min. % Lot Width <sup>(5)</sup>	35%	30%	--		30%						35%	25%	35%	40% <sup>(18)</sup>	40%	25%
Buffer Depth: Min. Feet <sup>(6)</sup>	--	--	20 <sup>(11)</sup>	20	--						10	30	15	30	30	30
<b>BUILDING</b>																
Height: Max. Feet <sup>(2)</sup>	35	35	35 <sup>(12)</sup>	35	35	50	40	40	40	<u>25</u>	28	28	28	35	35	28
Width: Max. Feet			230													
Max. Stories <sup>(2)</sup>	2 ½	2 ½	2 <sup>(13)</sup>	2 ½	2 ½	4	3	3	3	<u>2 ½</u>	2	2	2	2	2	2
Floor Area: Min Square Feet	1,400	1,400	N/A	--	1,200						--	--	--	--	--	--
Coverage: Max. Bldg. <sup>(7)</sup> Coverage	30%	30%	40%	40%	30%	60%	60%	60%	60%	<u>50%</u>	30%	30%	25%	30% <sup>(19)</sup>	35%	20%
Max Lot <sup>(8)</sup> Coverage	35%	40%	65%	65%	55%	90%	85%	90%	90%	<u>75%</u>	75%	90%	90%	75%	75%	50%
Dist. Restrict: Min. Feet <sup>(9)</sup>	--	--	N/A	--	--						35	50	50	85	100	75

**MAY 18, 2021**

**NOTES:**

- (1) Except that the township agency may grant an exception, pursuant to N.J.S.A. 40:55D-51, to permit a reduction in minimum lot depth by an amount not exceeding ten (10%) percent of the depth, provided that such lot otherwise fully conforms with minimum lot width and minimum lot area requirements.
- (2) Refer to subsection 20-5.4c.
- (3) Except that where the depth of the zone district is more than one hundred fifty (150) feet, then the front yard shall not be less than fifty (50) feet.
- (4) Except that where a side yard abuts the rear property line of one (1) or more residential properties, then such side yard shall not be less than thirty (30%) percent of the minimum required lot width.
- (5) Aggregate width of both side yards combined, as a percentage of lot width measured at front setback line of the principal building.
- (6) Minimum depth of buffer area along property line adjoining, or within, any residence district pursuant to subsection 20-21.1.
- (7) Maximum building coverage on the property, as defined under Section 18A-5.
- (8) Maximum lot coverage on the property, as defined under Section 18A-5.
- (9) Minimum distance from the principal building to the boundary line of any residence district.
- (10) No more than one-third (1/3) of building frontage shall be set back fifty (50) feet, and the remainder shall be set back no less than eighty (80) feet.
- (11) Wooded and landscaped buffers shall be provided for both side yards in accordance with subsection 20-21.1.
- (12) A parapet wall, not exceeding two (2) feet, is permitted and shall not be included in the calculation of building height.
- (13) Residential stories above ground-level parking.
- (14) In the B-2 Zone District, one (1) foot of additional building height is permitted with every additional twenty-five (25) feet of front yard setback over the minimum front yard setback of one hundred fifty (150) feet, up to a maximum height of thirty-five (35) feet.
- (15) A second permitted principal building in the B-2 Zone District shall comply with all setback requirements of the zone, except that the front yard setback minimum requirement for any second permitted principal building in the B-2 Zone District shall be sixty (60) feet.
- (16) Self-Storage facilities shall be permitted as a conditional use in the M-1 Limited Manufacturing District only, subject to the following condition: the minimum lot area shall be 250,000 square feet.
- (17) Self-Storage facilities shall be permitted as a conditional use in the M-1 Limited Manufacturing District only, subject to the following condition: the minimum lot frontage shall be 600 feet.
- (18) A pre-existing structure to be utilized as a self-storage facility shall be permitted to have a minimum lot width percentage of 15% provided that the footprint of the preexisting structure is not being expanded in connection with the use of the structure as a self-storage facility.
- (19) A pre-existing structure to be utilized as a self-storage facility shall be permitted to have a maximum building coverage of 40% provided that the footprint of the pre-existing structure is not being expanded in connection with the use of the structure as a self-storage facility.

It was regularly moved by Councilman Wolsky, seconded by Councilwoman Canale that the Ordinance be passed on first reading; that it be published and posted as a pending Ordinance in the manner required by law and that the Public Hearing be held on Tuesday, May 18, 2021.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

Councilman Wolsky asked Clerk Donovan to read the following ordinance by title: No. 1843 “AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 20 “ZONING” TO CREATE A NEW SUBSECTION 9C “R-7 MULTI-FAMILY RESIDENTIAL DISTRICT” AND TO SET FORTH THE STANDARDS AND CRITERIA APPLICABLE THERETO.

**WHEREAS**, the Township of West Caldwell has a constitutional obligation to create a realistic opportunity for the construction of its fair share of the region’s need for affordable housing; and

**WHEREAS**, the Township Council desires to create a realistic opportunity for the creation of affordable housing within the municipality; and

**WHEREAS**, the Township voluntarily brought a timely declaratory judgment action pursuant to the procedures set forth by the Supreme Court in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”) seeking approval of a Housing Element and Fair Share Plan that satisfies the Borough’s obligation to provide for its fair share of the regional need of low and moderate income housing; and

**WHEREAS**, after a Fairness Hearing held on September 10, 2020, by Order dated September 24, 2020, Hon. Robert H. Gardner, J.S.C. approved a settlement agreement between the Township of West Caldwell and Fair Share Housing Center, which was intended to establish the Township’s affordable housing obligations; and

**WHEREAS**, pursuant to the requirements of the September 24, 2020 Order, the Township of West Caldwell intends to supplement its Zoning Ordinance to include provisions addressing West Caldwell’s constitutional obligation to provide for its fair share of low and moderate income housing; and

**WHEREAS**, the Township Council has determined that certain lands comprised of Block 1700, Lot 2, known as 1200 Bloomfield Avenue, are suited for rezoning to permit inclusionary residential development.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Council of the Township of West Caldwell, in the County of Essex, as follows:

Section 1: Chapter 20 of the Township Code entitled “Zoning”, Subsection 5.1 entitled “Zone Districts” is hereby amended with the new underlined text:

- R-2 Single-Family Residence District
- R-3 Single-Family Residence District
- R-3A Single-Family Residence and Cluster District
- R-3B Single-Family Residence and Continuing Care Retirement Community District
- R-3C Multiple-Family Adult Community Residence District
- R-3D Single-Family Residence and Residential Cluster District
- R-4 Single-Family Residence District
- R-5 Multi-Family Residence District
- R-6 Multi-Family Residence District
- R-7 Multi-Family Residence District
- B-1 Special Business and Multi-Family Residence District
- B-2 Planned Shopping Center District
- B-3 General Business District
- M-1 Limited Manufacturing District
- M-2 Limited Industry and Research Laboratory District
- OP Office and Professional Building District
- OS Open Space District

Section 2: Chapter 20 of the Township Code entitled “Zoning”, is amended and supplemented with a new Subsection 9C entitled “R-7 Multi-Family Residence District” to read as follows:

§20-9C R-7 MULTI-FAMILY RESIDENCE DISTRICT.

The following standards shall apply to development within the R-7 District. When the standards herein conflict with other provisions of Chapter 20, the standards herein shall apply.

§20-9C.1 Permitted Principal Uses.

- j. Multi-family residential units, including townhouses and stacked townhomes. Stacked townhomes shall be defined as a one-family unit in a row of three such units, where units are stacked on each other. Units may be multi-level; however; all units shall have common fire-resistant walls and have direct access from the outside.

§20-9C.2 Permitted Accessory Uses.

- x. Off-street parking areas.
- y. Fences and walls complying with Subsection 20-21.14.
- z. Signs.
- aa. Trash enclosures.
- bb. Public and private utilities.

§20-9C.3 Height, Area, Bulk and Other Requirements.

- m. Height, area, bulk and other requirements shall conform with the provisions of Subsection 20-5.4.
- n. The density shall be 24 units to the acre, up to a maximum of 40 units.

§20-9C.4 Affordable Housing Requirements.

- s. Twenty percent of all units shall be set aside for low (including very-low) and moderate income households, regardless of tenure, for all new multi-family residential developments of five units or more. The set-aside shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more.
- t. Based on a maximum density of 24 units per acre and the 20% mandatory set-aside, the affordable housing yield will be eight units. Between one to two of these units shall be set aside for very-low income households.
- u. Affordable units shall be governed by deed restrictions ensuring long-term affordability controls in accordance with Chapter 23, Affordable Housing.
- v. The development, unit distribution, and marketing of all affordable units shall be undertaken consistent with Chapter 23, Affordable Housing, and all other applicable law, rules, and regulations, including applicable COAH regulations, the Fair Housing Act, and its requirement that at least 13% of all affordable units associated with this project be made affordable to very-low income households.
- w. The developer shall be responsible for all costs associated with the initial rental and/or sale of the affordable units, and for the continuing administration of the affordable units and the preservation of the creditworthiness of the units.

§20-9C.5 Parking Requirements.

- s. Parking shall be provided in accordance with Residential Site Improvement Standards.
- t. Spaces shall measure 9 feet wide by 18 feet long.
- u. Parking areas shall comply with Subsection §20-23.3 and §20-23.5.

§20-9C.6 Architecture.

- yy. Buildings shall avoid long, monotonous, uninterrupted walls or roof planes. Building wall offsets, including projections such as canopies and recesses, shall be used in order to add architectural interest and variety and to relieve the visual effect of a simple, long wall. Similarly, in the case of a pitched roof, roofline offsets, dormers or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.
- zz. The maximum spacing between building wall offsets shall be 60 feet.
- aaa. The minimum projection or depth of any individual vertical offset shall be one foot.
- bbb. The maximum spacing between roof offsets shall be 60 feet.
- ccc. The architectural treatment of the front facade shall be continued in its major features around all visibly exposed sides of a building. All sides of a building facing a public street shall be architecturally designed to be consistent with regard to style, materials, colors, and details.
- ddd. Fenestration shall be architecturally compatible with the style, materials, colors, and details of the building. Windows shall be vertically proportioned.
- eee. All entrances to a building shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, etc.
- fff. Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall be screened or otherwise specially treated to be, as much as possible, inconspicuous as viewed from the public right-of-way and adjacent properties.
- ggg. All rooftop mechanical equipment, inclusive of solar equipment, shall be screened from view from all vantage points at grade or below the roof.
- hhh. Placement of any packaged terminal air-conditioner units within the facade is prohibited.

§20-9A.8 Landscaping.

- r. Street trees shall be provided on average every 50 feet. Street trees shall have a caliper of three inches at installation.
- s. Parking areas containing a row of parking stalls running in a straight line for more than 20 spaces shall provide a landscaped island between every 20 spaces. Said island shall be no less than 162 square feet and landscaped with at least one shade tree and low ground cover. Said shade tree shall have a caliper of three inches at installation.
- t. Twenty-five percent of the perimeter of the building shall be surrounded by a landscaped, planted strip at least three feet in width. Walkways leading to pedestrian entrances and driveways may cross this landscape strip.

§20-9A.9 Lighting.

- p. Pedestrian walkways shall be illuminated with a minimum average of 0.5 footcandles.
- q. Parking areas shall be illuminated with a minimum average of 1.0 footcandle.
- r. Illumination shall not exceed 0.5 footcandles at the property line. However, this regulation shall not apply to entrance and/or exit driveways.

§20-9A.10 Trash.

- f. All trash/recycling storage areas shall be enclosed on all four sides and screened. Trash may be stored inside the buildings/units.

§20-9A.11 Signs.

- k. Signs shall be permitted in accordance with Subsection §20-24.2 and §20-24.3.
- l. One identification sign shall be permitted per parcel, which shall be free-standing, and no more than 20 square feet in size. Said sign may be internally or externally illuminated and shall be set back at

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least 10 feet from any property line.

Section 3. Attachment 1 entitled “Schedule of Height, Area, Bulk and Other Requirements” is hereby amended and supplemented with new underlined text as depicted on the attached schedule.

Section 4. The Official Zoning Map shall be changed to R-7 Multi-Family Residence District for Block 1700, Lot 2.

Section 5. Severability.

If any section, subsection, paragraph, sentence or other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect or invalidate the remainder of the Ordinance but shall be confined in its effect to this section, subsection, paragraph sentence or other part of this Ordinance directly involved in the controversy with respect to which said judgment shall have been rendered, and all other provisions of this Ordinance shall remain in full force and effect.

Section 6. Inconsistent Ordinances Repealed.

All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed, but only to the extent of such inconsistencies.

Section 7. Effective Date.

This Ordinance shall take effect immediately upon final adoption and publication in the manner prescribed by law, and its provisions shall apply to all building permits applied for on or after the date of adoption and publication hereof as prescribed by law.

*Attachment 1*  
**Schedule of Height, Area, Bulk and Other Requirements**  
 (Subsection 20-5.4)  
 Zoning Ordinance  
 Township of West Caldwell

(Ord. No. 890 § 20-5.4; Ord. No. 1209 § 5; Ord. No. 1283 § 7; Ord. No. 1464; Ord. No. 1561 § 1; Ord. No. 1639 § 3; Ord. No. 1729 § 1; Ord. No. 1797-2017 § 12; Ord. No. 1802-2017)

<b>ZONE DISTRICT</b>	<b>R-2</b>	<b>R-3/R-3A/R-3B</b>	<b>R-3C</b>	<b>R-3D</b>	<b>R-4</b>	<b>R-5</b>	<b>R-6</b>	<b><u>R-7</u></b>	<b>B-1</b>	<b>B-2</b>	<b>B-3</b>	<b>M-1</b>	<b>M-2</b>	<b>OP</b>
<b>LOT</b>														
Area: Min. Square Feet	17,500	14,000	4 Acres	174,240	10,500	4 Acres	75,000	<u>75,000</u>	5,000	15 Acres	20,000	80,000 <sup>(16)</sup>	5 Acres	3 Acres
Depth: Min. Feet <sup>(1)</sup>	140	140	330	300	140	600	500	<u>500</u>	100	500	200	400 <sup>(17)</sup>	400	400
Width: Min. Feet	125	100	370	500	75	200	100	<u>150</u>	50	500	100	200	400	250
<b>YARDS <sup>(2)</sup></b>														
Front: Min. Feet	40	40	50 <sup>(10)</sup>	50	40	40	40	<u>40</u>	25 <sup>(3)</sup>	150	75	50	100	75
Rear: Min. Feet	50	50	100	40	50	40		<u>40</u>	25	100	60	60	80	150
Side: Min. Quantity	2	2	2 side yards	2	2	2	2	<u>2</u>	1	2	2	2	2	2
Min. Feet (each)	15 <sup>(4)</sup>	10 <sup>(4)</sup>	50 feet minimum for each side yard with combined total of both side yards not less than 140 feet.	35	10 <sup>(4)</sup>	40	20	<u>15</u>	15	50	15	40	70	25
Min. % Lot Width <sup>(5)</sup>	35%	30%	--		30%				35%	25%	35%	40% <sup>(18)</sup>	40%	25%
Buffer Depth: Min. Feet <sup>(6)</sup>	--	--	20 <sup>(11)</sup>	20	--				10	30	15	30	30	30
<b>BUILDING</b>														
Height: Max. Feet <sup>(2)</sup>	35	35	35 <sup>(12)</sup>	35	35	50	40	<u>40</u>	28	28	28	35	35	28
Width: Max. Feet			230											
Max. Stories <sup>(2)</sup>	2 ½	2 ½	2 <sup>(13)</sup>	2 ½	2 ½	4	3	<u>3</u>	2	2	2	2	2	2
Floor Area: Min Square Feet	1,400	1,400	N/A	--	1,200				--	--	--	--	--	--
Coverage: Max. Bldg. <sup>(7)</sup> Coverage	30%	30%	40%	40%	30%	60%	60%	<u>60%</u>	30%	30%	25%	30% <sup>(19)</sup>	35%	20%
Max Lot <sup>(8)</sup> Coverage	35%	40%	65%	65%	55%	90%	85%	<u>90%</u>	75%	90%	90%	75%	75%	50%
Dist. Restrict: Min. Feet <sup>(9)</sup>	--	--	N/A	--	--				35	50	50	85	100	75

**NOTES:**

- (1) Except that the township agency may grant an exception, pursuant to N.J.S.A. 40:55D-51, to permit a reduction in minimum lot depth by an amount not exceeding ten (10%) percent of the depth, provided that such lot otherwise fully conforms with minimum lot width and minimum lot area requirements.
- (2) Refer to subsection 20-5.4c.
- (3) Except that where the depth of the zone district is more than one hundred fifty (150) feet, then the front yard shall not be less than fifty (50) feet.

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- (4) Except that where a side yard abuts the rear property line of one (1) or more residential properties, then such side yard shall not be less than thirty (30%) percent of the minimum required lot width.
- (5) Aggregate width of both side yards combined, as a percentage of lot width measured at front setback line of the principal building.
- (6) Minimum depth of buffer area along property line adjoining, or within, any residence district pursuant to subsection 20-21.1.
- (7) Maximum building coverage on the property, as defined under Section 18A-5.
- (8) Maximum lot coverage on the property, as defined under Section 18A-5.
- (9) Minimum distance from the principal building to the boundary line of any residence district.
- (10) No more than one-third (1/3) of building frontage shall be set back fifty (50) feet, and the remainder shall be set back no less than eighty (80) feet.
- (11) Wooded and landscaped buffers shall be provided for both side yards in accordance with subsection 20-21.1.
- (12) A parapet wall, not exceeding two (2) feet, is permitted and shall not be included in the calculation of building height.
- (13) Residential stories above ground-level parking.
- (14) In the B-2 Zone District, one (1) foot of additional building height is permitted with every additional twenty-five (25) feet of front yard setback over the minimum front yard setback of one hundred fifty (150) feet, up to a maximum height of thirty-five (35) feet.
- (15) A second permitted principal building in the B-2 Zone District shall comply with all setback requirements of the zone, except that the front yard setback minimum requirement for any second permitted principal building in the B-2 Zone District shall be sixty (60) feet.
- (16) Self-Storage facilities shall be permitted as a conditional use in the M-1 Limited Manufacturing District only, subject to the following condition: the minimum lot area shall be 250,000 square feet.
- (17) Self-Storage facilities shall be permitted as a conditional use in the M-1 Limited Manufacturing District only, subject to the following condition: the minimum lot frontage shall be 600 feet.
- (18) A pre-existing structure to be utilized as a self-storage facility shall be permitted to have a minimum lot width percentage of 15% provided that the footprint of the preexisting structure is not being expanded in connection with the use of the structure as a self-storage facility.
- (19) A pre-existing structure to be utilized as a self-storage facility shall be permitted to have a maximum building coverage of 40% provided that the footprint of the pre-existing structure is not being expanded in connection with the use of the structure as a self-storage facility.

It was regularly moved by Councilman Wolsky, seconded by Councilwoman Canale that the Ordinance be passed on first reading; that it be published and posted as a pending Ordinance in the manner required by law and that the Public Hearing be held on Tuesday, May 18, 2021.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

Councilman Wolsky asked Clerk Donovan to read the following ordinance by title: No. 1844 “AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 20 “ZONING” TO CREATE A NEW CONDITIONAL USE IN SUBSECTION 20-11.3, WHICH IS THE B-2 DISTRICT; IN SUBSECTION 20-12.3, WHICH IS THE B-3 DISTRICT; IN SUBSECTION 20-13.3, WHICH IS THE M-1 DISTRICT; AND IN SUBSECTION 20-14.3, WHICH IS THE M-2 DISTRICT AND TO SET FORTH THE STANDARDS AND CRITERIA APPLICABLE THERETO IN A NEW SUB-SECTION 20-17.29.

**WHEREAS**, the Township of West Caldwell has a constitutional obligation to create a realistic opportunity for the construction of its fair share of the region’s need for affordable housing; and

**WHEREAS**, the Township Council desires to create a realistic opportunity for the creation of affordable housing within the municipality; and

**WHEREAS**, the Township voluntarily brought a timely declaratory judgment action pursuant to the procedures set forth by the Supreme Court in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”) seeking approval of a Housing Element and Fair Share Plan that satisfies the Borough’s obligation to provide for its fair share of the regional need of low and moderate income housing; and

**WHEREAS**, after a Fairness Hearing held on September 10, 2020, by Order dated September 24, 2020, Hon. Robert H. Gardner, J.S.C. approved a settlement agreement between the Township of West Caldwell and Fair Share Housing Center, which was intended to establish the Township’s affordable housing obligations; and

**WHEREAS**, pursuant to the requirements of the September 24, 2020 Order, the Township of West Caldwell intends to supplement its Zoning Ordinance to include provisions addressing West Caldwell’s constitutional obligation to provide for its fair share of low and moderate income housing; and

**WHEREAS**, the Township Council has determined that certain lands within the B-2, B-3, M-1, and M-2 Zones with frontage on Passaic and/or Bloomfield Avenue are suited to permit inclusionary residential development as a conditional use.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Council of the Township of West Caldwell, in the County of Essex, as follows:

**Section 1:** Chapter 20 of the Township Code entitled “Zoning”, Subsection 20-11.3 entitled “Conditional Uses” within the B-2 Planned Shopping Center District is amended and supplemented with the following new underlined text:

§20-11.3 Conditional Uses.

- a. Restaurants, fast-food restaurants, outdoor dining, and personal communications antennas; all subject to the applicable standards of §20-17.
- b. Veterinary or animal hospitals, subject to the applicable standards of Subsection 20-17.28.
- c. Mixed-use inclusionary development, subject to the conditions of Subsection 20-17.29.

**Section 2:** Chapter 20 of the Township Code entitled “Zoning”, Subsection 20-12.3 entitled “Conditional Uses” within the B-3 General Business District is amended and supplemented with the following new underlined text:

- a. Schools, fast-food restaurants, outdoor dining, houses of worship, motor vehicle service stations, public garages, personal communications antennas, automobile laundries (car washes) and commercial communication antenna mounted on existing high-tension electric towers; all subject to the applicable standards of §20-17.
- b. Mixed-use inclusionary development, subject to the conditions of Subsection 20-17.29.

**Section 3:** Chapter 20 of the Township Code entitled “Zoning”, Subsection 20-13.3 entitled “Conditional Uses” within the M-1 Limited Manufacturing District is amended and supplemented with the following new underlined text:

- a. Indoor recreational facilities, indoor health facilities, nonresidential professional offices, personal communications antennas and commercial communication antenna mounted on existing high-tension electric towers; all subject to the applicable standards of §20-17.
- b. Trade union apprenticeship and/or journeyman training programs sponsored by labor organizations recognized by federal and state labor laws; all subject to the applicable standards of Subsection 20-17.24.
- c. Self-Storage Facilities, subject to the applicable standards of §20-17.
- d. Mixed-use inclusionary development, subject to the conditions of Subsection 20-17.29.

**Section 4:** Chapter 20 of the Township Code entitled “Zoning”, Subsection 20-14.3 entitled “Conditional Uses” within the M-2 Limited Industry and Research Laboratory District is amended and supplemented with the following new underlined text:

- a. Nonresidential professional offices, commercial communications antennas, personal communications antennas and commercial communication antennas mounted on existing high-tension electric towers; all subject to the applicable standards of §20-17.
- b. Mixed-use inclusionary development, subject to the conditions of Subsection 20-17.29.

Section 5: Chapter 20 of the Township Code entitled “Zoning”, Subsection §20-17 entitled “Conditional Uses and Standards”, shall be supplemented with a new Subsection 20-17.29 entitled “Mixed-use Inclusionary Development”:

§20-17.29 Mixed-use Inclusionary Development

- a. Mixed-use inclusionary development may contain ground floor retail sale, display or rental of commodities or services, office and professional uses, restaurants, parking, residential lobbies, and/or residential tenant amenities. Mixed-use inclusionary development may contain multi-family residential units on the upper floors.
- b. Mixed-use inclusionary development may have the following permitted accessory uses:
  - 1. First floor parking incorporated into the building design and off-street parking areas.
  - 2. Resident amenities including, but not limited to, clubrooms, lounges, game rooms, mail rooms, leasing office, and similar interior common resident amenities incorporated into a larger building design. These accessory uses shall not be in stand-alone structures.
  - 3. Fences and walls complying with Subsection 20-21.14.
  - 4. Signs.
  - 5. Trash enclosures.
  - 6. Public and private utilities.
- c. Mixed-use inclusionary development shall be subject to the following conditions:
  - 1. Parcels shall have direct frontage on Bloomfield Avenue or Passaic Avenue.
  - 2. Parcels shall have a minimum lot size of 4 acres.
  - 3. The maximum density shall be 20 units to the acre.
  - 4. The maximum building height shall be 4 stories and 45 feet.
  - 5. Twenty percent of all units shall be set aside for low (including very-low) and moderate income households, regardless of tenure.
- d. Mixed-use development shall be subject to the following requirements, however, any deviations from the below shall be treated as a “C” bulk variance:
  - 1. Minimum lot width – 200 feet
  - 2. Minimum front yard setback – 40 feet
  - 3. Minimum side yard setback, each – 20 feet
  - 4. Minimum rear yard setback – 30 feet
  - 5. Maximum building coverage – 60%
  - 6. Maximum lot coverage – 90%
  - 7. Affordable Housing Requirements.
    - (a) Affordable units shall be governed by deed restrictions ensuring long-term affordability controls in accordance with Chapter 23, Affordable Housing.
    - (b) The development, unit distribution, and marketing of all affordable units shall be undertaken consistent with Chapter 23, Affordable Housing, and all other applicable law, rules, and regulations, including applicable COAH regulations, the Fair Housing Act, and its requirement that at least 13% of all affordable units associated with this project be made affordable to very-low income households.
    - (c) The developer shall be responsible for all costs associated with the initial rental of the affordable units, and for the continuing administration of the affordable units and the preservation of the creditworthiness of the units.
  - 8. Buffer. A buffer shall be provided along any adjacent property containing a single-family detached home. Said buffer shall consist of either a solid six-foot-tall fence or a five-foot-wide evergreen buffer that is six-feet-tall.
  - 9. Parking Requirements.
    - (a) Parking shall be provided in accordance with Residential Site Improvement Standards for the multi-family residential units.
    - (b) For all other uses, parking shall be provided at the rate of one space for each 250 square feet of floor area.
    - (c) Spaces shall measure 9 feet wide by 18 feet long.
    - (d) Up to 10% of the parking spaces may be compact parking spaces.
    - (e) Parking areas shall comply with Subsection §20-23.3 and §20-23.5.
  - 10. Architecture.
    - (a) Buildings shall avoid long, monotonous, uninterrupted walls or roof planes. Building wall offsets, including projections such as canopies and recesses, shall be used in order to add architectural interest and variety and to relieve the visual effect of a simple, long wall. Similarly, in the case of a pitched roof, roofline offsets, dormers or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.
    - (b) The maximum spacing between building wall offsets shall be 75 feet.
    - (c) The minimum projection or depth of any individual vertical offset shall be one foot.
    - (d) The maximum spacing between roof offsets shall be 75 feet.
    - (e) The architectural treatment of the front facade shall be continued in its major features around all visibly exposed sides of a building. All sides of a building facing a public street shall be architecturally designed to be consistent with regard to style, materials,

- colors, and details.
- (f) Fenestration shall be architecturally compatible with the style, materials, colors, and details of the building. Windows shall be vertically proportioned.
  - (g) All entrances to a building shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, etc.
  - (h) Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall be screened or otherwise specially treated to be, as much as possible, inconspicuous as viewed from the public right-of-way and adjacent properties.
  - (i) All rooftop mechanical equipment, inclusive of solar equipment, shall be screened from view from all vantage points at grade or below the roof.
  - (j) Placement of any packaged terminal air-conditioner units within the facade is prohibited.
11. Landscaping.
- (a) Street trees shall be provided on average every 50 feet. Street trees shall have a caliper of three inches at installation.
  - (b) Parking areas containing a row of parking stalls running in a straight line for more than 20 spaces shall provide a landscaped island between every 20 spaces. Said island shall be no less than 162 square feet and landscaped with at least one shade tree and low ground cover. Said shade tree shall have a caliper of three inches at installation.
  - (c) Parking spaces within 25 feet of an adjacent residential property line shall be screened with a six-foot-tall fence or evergreen trees of at least four feet in height to shield vehicular headlights.
  - (d) Sixty percent of the perimeter of the building shall be surrounded by a landscaped, planted strip at least three feet in width. Walkways leading to pedestrian entrances and driveways may cross this landscape strip.
12. Lighting.
- (a) Pedestrian walkways shall be illuminated with a minimum average of 0.5 footcandles.
  - (b) Parking areas shall be illuminated with a minimum average of 1.0 footcandle.
  - (c) Illumination shall not exceed 0.5 footcandles at the property line. However, this regulation shall not apply to entrance and/or exit driveways.
13. Trash. All trash/recycling storage areas shall be enclosed on all four sides and screened. Trash may be stored inside the building.
14. Signs.
- (a) Signs shall be permitted in accordance with Subsection §20-24.2 and §20-24.3.
  - (b) Each non-residential tenant may have one wall sign, which complies with the requirements of Subsection 20-24.4k.1. through 3. Said signs may be internally or externally illuminated.
  - (c) One identification sign shall be permitted per parcel, which shall be free-standing, and no more than 20 square feet in size. Said sign may be internally or externally illuminated and shall be set back at least 10 feet from any property line.

Section 6. Severability.

If any section, subsection, paragraph, sentence or other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect or invalidate the remainder of the Ordinance but shall be confined in its effect to this section, subsection, paragraph sentence or other part of this Ordinance directly involved in the controversy with respect to which said judgment shall have been rendered, and all other provisions of this Ordinance shall remain in full force and effect.

Section 7. Inconsistent Ordinances Repealed.

All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed, but only to the extent of such inconsistencies.

Section 8. Effective Date.

This Ordinance shall take effect immediately upon final adoption and publication in the manner prescribed by law, and its provisions shall apply to all building permits applied for on or after the date of adoption and publication hereof as prescribed by law.

It was regularly moved by Councilman Wolsky, seconded by Councilwoman Canale that the Ordinance be passed on first reading; that it be published and posted as a pending Ordinance in the manner required by law and that the Public Hearing be held on Tuesday, May 18, 2021.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

Councilman Wolsky asked Clerk Donovan to read the following ordinance by title: No. 1845 “AN ORDINANCE DELETING AND REPLACING THE ENTIRETY OF CHAPTER 23 “AFFORDABLE HOUSING” TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS REGARDING COMPLIANCE WITH THE TOWNSHIP’S AFFORDABLE HOUSING OBLIGATIONS.

**WHEREAS**, the Township of West Caldwell has a constitutional obligation to create a realistic opportunity for the construction of its fair share of the region's need for affordable housing; and

**WHEREAS**, the Council of the Township of West Caldwell desires to create a realistic opportunity for the creation of affordable housing within the Township; and

**WHEREAS**, the Township voluntarily brought a timely declaratory judgment action pursuant to the procedures set forth by the Supreme Court in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mt. Laurel IV”) seeking approval of a Housing Element and Fair Share Plan that satisfies the Township’s obligation to provide for its fair share of the regional need of low and moderate income housing; and

**WHEREAS**, after a Fairness Hearing held on September 10, 2020, by Order dated September 25, 2020, Hon. Robert H. Gardner, J.S.C. approved a settlement agreement between the Township of West Caldwell and Fair Share Housing Center, which was intended to establish the Township’s affordable housing obligations; and

**WHEREAS**, West Caldwell is in the process of drafting a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq., which will address the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

**WHEREAS**, the Township is desirous of amending and supplementing the Township Code to include provisions addressing West Caldwell’s constitutional obligation to provide for its fair share of low and moderate income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

**WHEREAS**, this Ordinance is intended to provide assurances that low and moderate income units ("affordable units") are created with controls on affordability over time and that low and moderate income households shall occupy those units.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Council of the Township of West Caldwell, in the County of Essex, as follows:

**Section 1:** West Caldwell Township Code Chapter 23 “Affordable Housing” is hereby deleted in its entirety and replaced as follows:

**Chapter 23 Affordable Housing**

§23-1 Affordable Housing Regulations

- a. Purpose. The purpose of this Chapter is to provide for and regulate affordable housing in the Township of West Caldwell.
- b. Monitoring Requirements.
  1. On the first anniversary of the “Judgment of Compliance and Repose” or “the judicial equivalent of substantive certification”, and every anniversary thereafter through the end of the repose period, the Township agrees to provide annual reporting of its affordable housing trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (“FSHC”) and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the sources and amounts of funds collected and the amount and purpose for which any funds have been expended.
  2. On the first anniversary of the “Judgment of Compliance and Repose” or “the judicial equivalent of substantive certification”, and every anniversary thereafter through the end of the repose period, the Township agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website, with a copy of such provided to FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
  3. For the midpoint realistic opportunity review, due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
  4. For the review of very-low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the “Judgment of Compliance and Repose” or “the judicial equivalent of substantive certification”, and every third year thereafter, the Township will post on its municipal website, with copies provided to FSHC, a status report as to its satisfaction of its very-low income requirements, including the

family very-low income requirements referenced in the Settlement Agreement, dated June 17, 2020.

- c. Definitions. The following terms when used in this Ordinance shall have the meanings given in this Section:

**ACT**

The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

**ADAPTABLE**

Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

**ADMINISTRATIVE AGENT**

The entity designated by the Township to administer affordable units in accordance with this Ordinance, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-26).

**AFFIRMATIVE MARKETING**

A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

**AFFORDABILITY AVERAGE**

The average percentage of median income at which new restricted units in an affordable housing development are affordable to low and moderate income households.

**AFFORDABLE**

A sales price or rent level that is within the means of a low or moderate income household as defined within N.J.A.C. 5:93-7.4, and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

**AFFORDABLE HOUSING DEVELOPMENT**

A development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Township's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable housing development.

**AFFORDABLE HOUSING PROGRAM(S)**

Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

**AFFORDABLE UNIT**

A housing unit proposed or created pursuant to the Act and approved for crediting by the Court and/or funded through an affordable housing trust fund.

**AGENCY**

The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

**AGE-RESTRICTED UNIT**

A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development wherein the unit is situated are 62 years of age or older; or 2) at least 80% of the units are occupied by one person who is 55 years of age or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

**ALTERNATIVE LIVING ARRANGEMENTS**

A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

**ASSISTED LIVING RESIDENCE**

A facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

**CERTIFIED HOUSEHOLD**

A household that has been certified by an Administrative Agent as a low income household or moderate income household.

**COAH**

The Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.), or any successor agency charged with the administration of the Act.

**COURT**

The Superior Court of New Jersey, Law Division, Essex County.

**DCA**

The State of New Jersey Department of Community Affairs.

**DEFICIENT HOUSING UNIT**

A housing unit with health and safety code violations that requires the repair or replacement of a

major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

**DEVELOPER**

Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land included in a proposed development including the holder of an option to contract to purchase, or other person having an enforceable proprietary interest in such land.

**DEVELOPMENT**

The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1, et seq.

**INCLUSIONARY DEVELOPMENT**

A development containing both affordable units and market rate units. This term includes, but is not limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

**LOW INCOME HOUSEHOLD**

A household with a total gross annual household income equal to 50% or less of the regional median household income by household size.

**LOW INCOME UNIT**

A restricted unit that is affordable to a low income household.

**MAJOR SYSTEM**

The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and load bearing structural systems.

**MARKET-RATE UNIT**

Housing not restricted to low and moderate income households that may sell or rent at any price.

**MEDIAN INCOME**

The median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the Court.

**MODERATE INCOME HOUSEHOLD**

A household with a total gross annual household income in excess of 50% but less than 80% of the regional median household income by household size.

**MODERATE INCOME UNIT**

A restricted unit that is affordable to a moderate income household.

**MULTI-FAMILY UNIT**

A structure containing five or more dwelling units.

**NON-EXEMPT SALE**

Any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

**RANDOM SELECTION PROCESS**

A process by which currently income-eligible households are selected for placement in affordable housing 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 (e.g., by lottery).

**REGIONAL ASSET LIMIT**

The maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

**REHABILITATION**

The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

**RENT**

The gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

**RESTRICTED UNIT**

A dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

**UHAC**

The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26, et seq.

**VERY-LOW INCOME HOUSEHOLD**

A household with a total gross annual household income equal to 30% or less of the regional median household income by household size

**VERY-LOW INCOME UNIT**

A restricted unit that is affordable to a very-low income household.

**WEATHERIZATION**

Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

d. Applicability.

1. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Township of West Caldwell pursuant to the Township’s most recently adopted Housing Element and Fair Share Plan.
2. Moreover, this Ordinance shall apply to all developments that contain low and moderate income housing units, including any currently unanticipated future developments that will provide low and moderate income housing units.

e. Township-wide Set-aside.

1. Any property in the Township of West Caldwell that receives a use variance, density variance increasing the permissible density at the site, a rezoning permitting multi-family residential housing where not previously permitted or a new redevelopment plan, to permit multi-family residential development, which would yield five or more additional units (over and above those already permitted as of right), that are developed at a density of six or more units per acre, shall provide a minimum affordable housing set-aside of twenty (20%) percent regardless of tenure.
2. This requirement shall not apply to sites zoned for inclusionary residential development to meet the Realistic Development Potential or the overlay zones created to meet the unmet need as part of the Township’s Housing Element and Fair Share Plan, which shall comply with the applicable zoning or redevelopment plan requirements of providing affordable housing units.
3. This requirement does not, and shall not be construed to, grant any developer the right to any rezoning, variance, redevelopment designation or other relief or establish any obligations on the part of the municipality to grant such rezoning, variance, redevelopment designation or other relief.
4. A property shall not be permitted to be subdivided so as to avoid compliance with this requirement.
5. All affordable units created pursuant to this Section shall be governed by the provisions of Chapter 23 “Affordable Housing”.

f. Alternate Living Arrangements.

1. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:
  - (a) Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by COAH or the Court.
  - (b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
2. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by COAH or the Court.
  - (a) The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

g. Inclusionary Zoning.

1. To implement the fair share plan in a manner consistent with the terms of the June 17, 2020 Settlement Agreement, ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning shall be permitted as outlined in the Township’s Housing Plan Element and Fair Share Plan.

h. Phasing Schedule for Inclusionary Zoning.

1. In inclusionary developments, the following schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low and Moderate Income Units Completed
25	0
25+1	10
50	50
75	75
90	100

i. Fractional Units and Payments-in-Lieu.

1. Inclusionary developments that result in a fractional affordable housing obligation of 0.4 or

less may round the number of affordable units down. The Applicant shall make a pro-rated payment-in-lieu to cover the fraction.

2. If the required number of affordable units results in a fraction of 0.5 or greater, the Applicant shall round up and provide the additional affordable unit.
3. The payment-in-lieu for West Caldwell shall be \$200,000 for 2020. The payment-in-lieu shall increase by 3% each year. To calculate the payment-in-lieu the developer shall multiply the fraction by the payment. For example, a fraction of 0.4 triggered in 2020 would require a payment of \$80,000. The payment shall be made to the Township's Affordable Housing Trust Fund.

j. New Construction.

1. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

- (a) The fair share obligation shall be divided equally between low and moderate income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit. At least 13% of all restricted rental units shall be very-low income units (affordable to a household earning 30% or less of median income). The very-low income units shall be counted as part of the required number of low income units within the development.
- (b) At least 25% of the obligation shall be met through rental units, including at least half in rental units available to families
- (c) No more than 25% of affordable units shall be age-restricted. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low income and very-low-income units.
- (d) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
  - [1] The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low and moderate income units;
  - [2] At least 30% of all low and moderate income units shall be two bedroom units;
  - [3] At least 20% of all low and moderate income units shall be three bedroom units; and
  - [4] The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
- (e) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low and moderate income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit. The Township shall not be permitted to claim credit to satisfy its obligations under the Settlement Agreement for age-restricted units that exceed 25% of all units developed.

2. Accessibility Requirements

- (a) The first floor of all restricted townhouse dwelling units and all restricted units in all other multi-story buildings shall be subject to the technical design standards of the Barrier Free SubCode, N.J.A.C. 5:23-7.
- (b) All restricted townhouse dwelling units and all restricted units in other multi-story buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
  - [1] An adaptable toilet and bathing facility on the first floor; and
  - [2] An adaptable kitchen on the first floor; and
  - [3] An interior accessible route of travel on the first floor; and
  - [4] An adaptable room that can be used as a bedroom, with a door or casing for the installation of a door, on the first floor; and
  - [5] If not all of the foregoing requirements in (b)[1] through (b)[4] can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs (b)[1] through (b)[4] above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
  - [6] An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a, et seq.) and the Barrier Free SubCode, N.J.A.C. 5:23-7, or evidence that West Caldwell has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
    - (i) Where a unit has been constructed with an adaptable entrance, upon the request of a person with disabilities who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
    - (ii) To this end, the builder of restricted units shall deposit funds within the Township of West Caldwell's Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
    - (iii) The funds deposited under paragraph [6][ii] above shall be used by the Township of West Caldwell for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.

- (iv) The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Township of West Caldwell for the conversion of adaptable to accessible entrances.
  - (v) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free SubCode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township's Affordable Housing Trust Fund in care of the Township Chief Financial Officer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
  - (vi) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free SubCode, N.J.A.C. 5:23-7.
3. Design.
- (a) In inclusionary developments, to the extent possible, low and moderate income units shall be integrated with the market units.
  - (b) In inclusionary developments, low and moderate income units shall have access to all of the same common elements and facilities as the market units.
4. Maximum Rents and Sales Prices.
- (a) In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and using the calculation set forth below. Income limits for all affordable units that are created in the Township for which income limits are not already established through a federal program exempted from the UHAC pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Township annually within 30 days of the publication of determinations of median income by the Department of Housing and Urban Development ("HUD") as follows:
    - [1] Regional income limits shall be established for the region within which the Township is located based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. This is done for each county in the housing region and the resulting product for each county within the housing region is summed. The sum is then divided by the estimated total households from the most recent decennial Census in the Township's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate income unit for a household of four shall be 80% of the regional weighted average median income for a family of four. The income limit for a low income unit for a household of four shall be 50% of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very-low income unit for a household of four shall be 30% of the HUD determination of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
    - [2] The income limits are the result of applying the percentages set forth in paragraph [1] above to HUD's determination of median income for the fiscal year 2019 and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
    - [3] The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)(3) shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph [1] above over the previous year's income limits and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
  - (b) In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by COAH or a successor entity.
  - (c) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52% of median income.
  - (d) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low income and moderate income

units, provided that at least 13% of all low and moderate income rental units shall be affordable to very-low income households, earning 30% or less of the regional median household income, with such very-low income units counted the low income housing requirement.

- (e) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate income ownership units must be available for at least three different sales prices for each bedroom type, and low income ownership units must be available for at least two different sales prices for each bedroom type.
  - (f) In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
    - [1] A studio shall be affordable to a one-person household;
    - [2] A one-bedroom unit shall be affordable to a one and one-half person household;
    - [3] A two-bedroom unit shall be affordable to a three-person household;
    - [4] A three-bedroom unit shall be affordable to a four and one-half person household; and
    - [5] A four-bedroom unit shall be affordable to a six-person household.
  - (g) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
    - [1] A studio shall be affordable to a one-person household;
    - [2] A one-bedroom unit shall be affordable to a one and one-half person household; and
    - [3] A two-bedroom unit shall be affordable to a two-person household or two one-person households.
  - (h) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
  - (i) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
  - (j) The price of owner-occupied low and moderate income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.
  - (k) The rent of low and moderate income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.
- k. Utilities.
- 1. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
  - 2. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by HUD for its Section 8 program.
- l. Occupancy Standards.
- 1. In referring certified households to specific restricted units, the Administrative Agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:
    - (a) Provide an occupant for each bedroom;
    - (b) Provide children of different sexes with separate bedrooms;
    - (c) Provide separate bedrooms for parents and children; and
    - (d) Prevent more than two persons from occupying a single bedroom.
- m. Control Periods for Restricted Ownership Units and Enforcement Measures.
- 1. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance for a period of at least 30 years, until West Caldwell takes action to release the unit from such requirements; prior to such action, a restricted ownership unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1,

- as may be amended and supplemented.
2. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
  3. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
  4. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
  5. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
  6. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.
- n. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.
1. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
    - (a) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
    - (b) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
    - (c) The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low and moderate income purchasers and those paid by market purchasers.
    - (d) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Section q.
- o. Buyer Income Eligibility.
1. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate income ownership units shall be reserved for households with a gross household income less than 80% of median income.
  2. Notwithstanding the foregoing, however, the Administrative Agent may, upon approval by the Township Council, and subject to the Court's approval, permit moderate income purchasers to buy low income units in housing markets if the Administrative Agent determines that there is an insufficient number of eligible low income purchasers to permit prompt occupancy of the units. All such low income units to be sold to moderate income households shall retain the required pricing and pricing restrictions for low income units.
  3. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
  4. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low income household or a moderate income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33% of the household's eligible monthly income.
- p. Limitations on Indebtedness Secured by Ownership Unit; Subordination.
1. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
  2. With the exception of First Purchase Money Mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of the unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-26.6(b).
- q. Capital Improvements to Ownership Units.
1. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made

since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that adds an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.

2. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.
- r. Control Periods for Restricted Units.
1. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80- 26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 30 years, until West Caldwell takes action to release the unit from such requirements. These controls may be unilaterally extended by the Township. Prior to such action, a restricted rental unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
  2. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Essex. The deed shall also identify each affordable unit by apartment number and/or address and whether that unit is designated as a very-low, low or moderate income unit. Neither the unit nor its affordability designation shall change throughout the term of the deed restriction. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
  3. A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:
    - (a) Sublease or assignment of the lease of the unit;
    - (b) Sale of other voluntary transfer of the ownership of the unit; or
    - (c) The entry and enforcement of any judgment of foreclosure on the property containing the unit.
- s. Rent Restrictions for Rental Units; Leases.
1. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
  2. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
  3. Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.
  4. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least 15% of the total number of dwelling units are restricted rental units in compliance with this Ordinance.
- t. Tenant Income Eligibility.
1. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
    - (a) Very-low income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
    - (b) Low income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
    - (c) Moderate income rental units shall be reserved for households with a gross household income less than 80% of median income.
  2. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very-low income household, low income household or a moderate income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
    - (a) The household currently pays more than 35% (40% for households eligible for age-

restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;

- (b) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  - (c) The household is currently in substandard or overcrowded living conditions;
  - (d) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  - (e) The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
3. The applicant shall file documentation sufficient to establish the existence of the circumstances in 2(a) through 2(e) above with the Administrative Agent, who shall counsel the household on budgeting.

§23-2 Municipal Housing Liaison.

- a. The Township of West Caldwell shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, monitoring and reporting, and, where applicable, supervising any contracted Administrative Agent. The Municipal Housing Liaison shall be appointed by the governing body and may be a full or part time municipal employee.
- b. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for West Caldwell, including the following responsibilities which may not be contracted out to the Administrative Agent:
  - 1. Serving as West Caldwell's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
  - 2. Monitoring the status of all restricted units in West Caldwell's Fair Share Plan;
  - 3. Compiling, verifying and submitting annual monitoring reports as may be required by the Court;
  - 4. Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and
  - 5. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.
- c. Subject to the approval of the Court, the Township of West Caldwell shall designate one or more Administrative Agent(s) to administer newly constructed affordable units in accordance with UHAC. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Court. The Operating Manual(s) shall be available for public inspection in the office of the Township Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s). The Municipal Housing Liaison shall supervise the contracting Administrative Agent(s).
- d. Compensation. Compensation shall be fixed by the governing body at the time of the appointment of the Municipal Housing Liaison.

§23-3 Administrative Agent.

- a. The Administrative Agent shall be an independent entity serving under contract to and reporting to the municipality. For new sale and rental developments, all of the fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required. For resales, single family homeowners and condominium homeowners shall be required to pay three percent of the sales price for services provided by the Administrative Agent related to the resale of their homes. That fee shall be collected at closing and paid directly to the Administrative Agent. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which include:
  - 1. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Township of West Caldwell and the provisions of N.J.A.C. 5:80-26.15; and
  - 2. Providing counseling or contracting to provide counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- b. Household Certification:
  - 1. Soliciting, scheduling, conducting and following up on interviews with interested households;
  - 2. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low or moderate income unit;
  - 3. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
  - 4. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
  - 5. Creating and maintaining a referral list of eligible applicant households living in the

housing region and eligible applicant households with members working in the housing region where the units are located; and

6. Employing a random selection process as provided in the Affirmative Marketing Plan of the Township of West Caldwell when referring households for certification to affordable units.
- c. Affordability Controls:
  1. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
  2. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
  3. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Essex County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit;
  4. Communicating with lenders regarding foreclosures; and
  5. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.
- d. Sales and Re-rentals:
  1. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or rental; and
  2. Instituting and maintaining an effective means of communicating information to low and moderate income households regarding the availability of restricted units for resale or rental.
- e. Processing Requests from Unit Owners:
  1. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;
  2. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
  3. Notifying the municipality of an owner's intent to sell a restricted unit; and
  4. Making determinations on requests by owners of restricted units for hardship waivers.
- f. Enforcement:
  1. Securing annually from the Township a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
  2. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
  3. The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
  4. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
  5. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
  6. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Township Council and the Court, setting forth procedures for administering the affordability controls.
- g. Additional Responsibilities:
  1. The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
  2. The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet any monitoring requirements and deadlines imposed by the Court.
  3. The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

§23-4 Affirmative Marketing Requirements.

- a. The Township of West Caldwell shall adopt by resolution an Affirmative Marketing Plan, subject to the approval of the Court that is compliant with N.J.A.C. 5:80-25.15, as may be amended and supplemented.
- b. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. In addition, as a result of the Settlement Agreement, the Affirmative Marketing Plan shall require

the notification of the Fair Share Housing Center, New Jersey State Conference of the NAACP, the Latino Action Network, East Orange Family Success Center, Essex County Housing Authority, HANDS, Inc., and Supportive Housing Association of affordable housing opportunities. It is a continuing program that directs marketing activities toward Housing Region 2 and is required to be followed throughout the period of restriction.

- c. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 2, comprised of Essex, Morris, Union, and Warren Counties.
- d. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the Township of West Caldwell shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- e. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- f. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.
- g. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- h. Applications for affordable housing shall be available in several locations, including, at a minimum, the Morris County Library, Warren County Library Headquarters, Essex County/Hall of Records, Union County/Administrative Building, and the developer's rental office. Pre-applications may be emailed to prospective applicants upon request. Otherwise, hard copies are available from the Municipal Housing Liaison.
- i. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.
- j. Pursuant to P.L. 2020, c.51, effective November 1, 2020, owners, developers, property managers, and all other administrative entities responsible for the affirmative marketing of any affordable housing units shall:
  1. Post their units to the Housing Resource Center (<https://www.njhrc.gov/>) within one day of accepting or soliciting applications, if:
    - (a) The affordable units are being listed for the first time;
    - (b) Existing units are expected to become available; or
    - (c) Applications for waitlist positions are being accepted.
  2. Post a listing for a lottery, if the entity elects to hold one, to the Housing Resource Center at least 60 days prior to the lottery's occurrence.
  3. A posting resulting from 1.(a) or 2. above shall include a link to an online fillable PDF application form and information regarding how to request a paper application.
  4. The owner, developer, property manager, or administrative entity shall submit evidence of the listing of their available units and waitlist openings to the Township's administrative agent and municipal housing liaison.

§23-5 Enforcement of Affordable Housing Regulations.

- a. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- b. After providing written notice of a violation to an Owner, Developer or Tenant of a low or moderate income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
  1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
    - (a) A fine of not more than \$500.00 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense. In the case of an Owner who has rented a low or moderate income unit in violation of the regulations governing affordable housing units, payment into the Township of West Caldwell Affordable Housing Trust Fund of the gross amount of rent illegally collected.
    - (b) In the case of an Owner who has rented a low or moderate income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
  2. The Township may file a court action in the Superior Court seeking a judgment that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a

mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low or moderate income unit:

- (a) The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low and moderate income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.
  - (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low and moderate income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.
  - (c) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low and moderate income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
  - (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low and moderate income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low and moderate income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
  - (e) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low-and moderate-income unit as permitted by the regulations governing affordable housing units.
  - (f) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.
- c. Failure of the owner, developer, property manager, or administrative entity to comply with Section §23-4j. may result in the municipal housing liaison levying fines against the owner of the development for instances of non-compliance, following written notice to the owner as follows:
1. A fine for the first offense of non-compliance of \$5,000.
  2. A fine for the second offense of non-compliance of \$10,000.
  3. A fine for each subsequent offense of non-compliance of \$15,000.
  4. All funds generated by these fines shall be deposited into the Township's Affordable Housing Trust Fund.
- d. A fine pursuant to c. above shall not be issued unless the municipal housing liaison first provides the owner with written notice no less than two months prior to the date the fine is levied. A fine shall only be issued if the offense has not been cured within that two-month timeframe.

§23-6 Appeals.

Appeals from all decisions of an Administrative Agent appointed pursuant to this Ordinance shall be filed in writing with the Executive Director of COAH or with the Superior Court, Essex County Vicinage.

**Section 2. Severability**

If any section, subsection, paragraph, sentence or other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect or invalidate the remainder of the Ordinance but shall be confined in its effect to this section, subsection, paragraph sentence or other part of this Ordinance directly involved in the controversy with respect to which said judgment shall have been rendered, and all other provisions of this Ordinance shall remain in full force and effect.

**Section 3. Inconsistent Ordinances Repealed.**

All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed, but only to the extent of such inconsistencies.

**Section 4. Effective Date.**

This Ordinance shall take effect immediately upon final adoption and publication in the manner prescribed by law, and its provisions shall apply to all building permits applied for on or after the date of adoption and publication hereof as prescribed by law.

It was regularly moved by Councilman Wolsky, seconded by Councilwoman Canale that the Ordinance be passed on first reading; that it be published and posted as a pending Ordinance in the manner required by law and that the Public Hearing be held on Tuesday, May 18, 2021.

Mayor Tempesta reported that the previous ordinances were required by West Caldwell's settlement of litigation over its affordable housing obligations. The Township's settlement will go before Superior Court Judge Robert Gardner in a fairness hearing on July 8.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

**PUBLIC SAFETY:**

**REPORT – MUNICIPAL COURT – APRIL 2021**

On the recommendation of Councilman Docteroff, the report submitted by the Municipal Court Administrator for the month of April 2021 as received, be placed on file. Fines in the amount of \$10,740.55 were collected and apportioned as follows (copies attached to minutes).

Councilman Docteroff offered his condolences on the passing of Chief Capriglione's grandfather, Arnold Capriglione.

Councilman Docteroff reported that the two pools will be opening up during Memorial Day weekend.

Chief Luker mentioned the fire at Caldwell University and that no one was hurt.

Chief Capriglione thanked Mayor and Council for hiring another officer and for their prayers on the passing of his grandfather.

**PUBLIC WORKS:**

Councilwoman Canale reported that the public works projects are moving along on schedule.

**ADVISORS' REPORTS:**

Administrator Baltycki thanked Mayor and Council for their support on introducing the budget and thanked Kayla Capriglione for the late nights working on the budget.

Clerk Donovan reported that all districts will move to James Caldwell High School beginning on June 8, the primary election.

Mayor Tempesta reported that it will be a good think for all voters to vote at James Caldwell High School.

**MAYOR'S REPORT**

In his report, Mayor Tempesta stated his concerns on neighboring communities and how shared services and residents would be better served with the communities helping one another.

**INVITATION FOR PUBLIC COMMENT:**

Jan Zlotnik, 49 Woodland Road stated his concerns with their neighbor Amazon that included noise and dirt. Melanie Zlotnik also reported on her concerns for her well-being and

health.

Mayor Tempesta asked Administrator Baltycki to speak to the manager at Amazon about the various complaints and report back to the residents and to Mayor and Council.

**ADJOURNMENT TO CLOSED EXECUTIVE SESSION:**

Mayor Tempesta stated that the Council reserves the right to come out of closed session and vote on any matter.

On a motion of Councilman Docteroff, seconded by Councilman Wolsky, the meeting adjourned at 8:30 pm to Closed Executive Session.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

On the motion of Council President Crudele, seconded by Councilman Docteroff, the meeting reconvened to open session at 8:49: pm.

Upon the vote being polled, Councilmen Crudele, Cecere, Hladik, Wolsky, Docteroff and Councilwoman Canale voted in the affirmative.

**ADJOURNMENT:**

There being no further business before the Council, on a motion from Councilman Docteroff and a second by Councilman Wolsky, the meeting adjourned at 8:50 pm. All were in favor.

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Mary S. Donovan  
Township Clerk

**Township of West Caldwell**  
**Closed Executive Session Minutes via free conference call.**  
**May 18, 2021**

PRESENT: Mayor Tempesta, Council members Crudele, Cecere, Hladik, Wolsky, Docteroff and Canale

OTHERS PRESENT: Nikole H. Baltycki, Business Administrator/CFO  
Mary S. Donovan, Township Clerk  
Paul G. Jemas, Esq., Township Attorney

Start time: 8:31 pm

**Potential Litigation – Amazon 10 Patton Drive**

Mayor Tempesta stated that since Amazon was discussed at length in open session tonight the subject doesn't have to be discussed further. Township Attorney Jemas will review the resolution from the Planning Board and write a developer's agreement and present to Amazon. Mayor Tempesta asked Administrator Baltycki to make sure Amazon paints a two foot length of sign -to make sure that the true color comes through to viewers and that the neighbors will review it.

**Potential Litigation – Borough of Caldwell; Caldwell Sewer Utility and others**

Redacted per NJSA 47:1A Attorney/client privileged communication.

The meeting convened to open session at 8:49 pm.

Respectfully submitted,

Mary S. Donovan, RMC  
Municipal Clerk

  
Approved for Release by vote of Council.