TOWNSHIP OF WEST CALDWELL
PUBLIC MEETING MINUTES
February 17, 2026

A Special Meeting of the West Caldwell Mayor and Council, in the County of Essex, New Jersey, was held in the public meeting room of the Municipal Building, 30 Clinton Road, West Caldwell, Tuesday, February 17, 2026 at 6:00 pm.

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 Canale, Cecere, Wolsky, Docteroff, Crudele, and Schott

OTHERS PRESENT: Nikole H. Baltycki, Township Administrator/CFO
Joann DeBlasis, Township Clerk
Paul G. Jemas, Esq., Township Attorney

Pledge of Allegiance led by Council President Canale

Council President Canale also gave the invocation.

Mayor Tempesta explained why we needed to have a Special Meeting.

INTRODUCTION OF ORDINANCES:

Mayor Tempesta asked Clerk DeBlasis to read the title of the following Ordinance:

Ordinance No. 1900

AN ORDINANCE DELETING AND REPLACING CHAPTER 23 "AFFORDABLE HOUSING" TO UPDATE THE TOWNSHIP'S AFFORDABLE HOUSING ORDINANCE IN ACCORDANCE WITH THE DECEMBER 2025 UNIFORM HOUSING AFFORDABILITY CONTROLS, THE N.J.A.C. 5:99 REGULATIONS, AND THE AMENDED FAIR HOUSING ACT

WHEREAS, the Township of West Caldwell filed a Declaratory Judgment Action on January 23, 2025 seeking a certification of compliance with the Fair Housing Act; and

WHEREAS, the West Caldwell Planning Board adopted the 2025 Housing Element & Fair Share Plan for the Fourth Round on June 23, 2025, which was duly endorsed by the Township Council, and timely filed with the Affordable Housing Dispute Resolution Program; and

WHEREAS, the Township has entered into a Mediation Agreement with Fair Share Housing Center that requires all of the implementing documents, including a Affordable Housing Ordinance, to be adopted by March 15, 2026; and

WHEREAS, new N.J.A.C. 5:99 regulations and new Uniform Affordability Housing Controls rules were adopted in December of 2025; and

WHEREAS, the Department of Community Affairs ("DCA") is preparing a template affordable housing ordinance for municipalities; however said template has not yet been released; and

WHEREAS, in order to comply with the March 15, 2026 deadline, the Township is adopting this interim ordinance until the DCA issues a template ordinance, and will introduce an amended affordable housing ordinance after the state template is released; and

WHEREAS, the Township seeks to delete and replace its existing Affordable Housing Ordinance to reflect the new regulations.

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 23 of the Township Code entitled "Affordable Housing" is deleted in its entirety and replaced as follows:

Chapter 23 Affordable Housing

§23-1 **AFFORDABLE HOUSING REGULATIONS.**

a. Purpose and Applicability.

1. This Chapter of the Code sets forth regulations regarding the very low-, low- and moderate-income housing units in the Township of West Caldwell consistent with the provisions outlined in P.L 2024, Chapter 2, including the amended Fair Housing Act ("FHA") at N.J.S.A. 52:27D-301 et seq., as well as the Department of Community Affairs, Division of Local Planning Services ("LPS") at N.J.A.C. 5:99 et seq., statutorily upheld existing regulations of the now-defunct Council on Affordable Housing ("COAH") at N.J.A.C. 5:93 and 5:97, the Uniform Housing Affordability Controls ("UHAC") at N.J.A.C. 5:80-26.1 et seq., and as reflected in the adopted municipal Fourth Round Housing Element and Fair Share Plan ("HEFSP").

2. This Chapter is intended to ensure that very low-, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very low-, low- and moderate-income households shall occupy these units pursuant to statutory requirements. This article shall apply to all inclusionary developments, individual affordable units, and 100% affordable housing developments except where inconsistent with applicable law. Low-Income Housing Tax Credit financed developments shall adhere to the provisions set forth below.

3. The West Caldwell Planning Board has adopted a HEFSP pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan describes the ways the municipality shall address its fair share of very low-, low- and moderate-income housing as approved by the Superior Court and documented in the Housing Element.

4. This Chapter implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of P.L 2024, Chapter 2, the FHA, N.J.A.C. 5:99, NJ Supreme Court upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC at N.J.A.C. 5:80-26.1, as may be amended and supplemented.

5. Applicability.

   (a) Nothing hereinto shall be interpreted to deprive the Township of any rights, including the right to seek approval of any waivers permitted under UHAC or other relevant sources of law.

   (b) The provisions of this Chapter shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created pursuant to the municipality's most recently adopted HEFSP.

   (c) This Chapter shall apply to all developments that contain very low-, low- and moderate-income housing units included in the Municipal HEFSP, including any unanticipated future developments that will provide very low-, low- and moderate-income housing units.

   (d) Projects receiving federal Low Income Housing Tax Credit financing and are proposed for credit shall comply with the low/moderate split and bedroom distribution requirements, maximum initial rents and sales prices requirements, affirmative fair marketing requirements of UHAC at N.J.A.C. 5:80-26.16 and the length of the affordability controls applicable to such projects shall be not less than a 30-year compliance period plus a 15-year extended-use period, for a total of not less than 45 years.

b. Monitoring and Reporting Requirements.

1. The municipality shall comply with the monitoring and reporting requirements of P.L 2024, Chapter 2 and N.J.A.C. 5:99 regarding the status of the implementation of its court-approved Housing Element and Fair Share Plan:

c. 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 20% 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.

d. Fractional Units and Subsidy Payments.

1. Inclusionary developments that result in a fractional affordable housing obligation of 0.49 or less may round the number of affordable units down. The applicant shall make a subsidy payment to cover the fraction.

2. If the required number of affordable units results in a fraction of 0.5 or greater, the application shall round up and provide the additional affordable unit.

3. The subsidy payment for West Caldwell shall be $238,810 for 2026. The subsidy payment shall increase by 3% each year. To calculate the subsidy payment, the developer shall multiply the fraction by the payment. For example, a fraction of 0.4 triggered in 2026 would require a payment of $95,524. The payment shall be made to the Township's Affordable Housing Trust Fund.

4. The basis for the 2026 payment-in-lieu figure is the 2008 subsidy figure of $148,638 for Region 2 referenced in N.J.A.C. 5:97-6.4(c)3. Next, the increase in land, construction, and other costs were factored into the figure, which results in the amount of $200,000.

e. Affordable Housing Programs.

1. Pursuant to amended UHAC regulations at N.J.A.C. 5:80-26.1 et seq. and, in addition, pursuant to P.L. 2024, c.2 and specifically to the amended FHA at N.J.S.A. 52:27D-311.m, "All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute, including but not limited to P.L. 2024, c.2, or binding court decisions."

2. All affordable housing units created within the Township of West Caldwell shall comply with the version of N.J.A.C. 5:80-26.1 et seq. in effect at the time of application or zoning approval.

§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's responsibilities can be found in N.J.A.C. 5:99.

§23-3 **ADMINISTRATIVE AGENT.**

a. All municipalities that have created or will create affordable housing programs and/or affordable units shall designate or approve, for each project within its HEFSP, an administrative agent to administer the affordable housing program and/or affordable housing units in accordance with the requirements of the FHA, NJAC 5:99-1 et seq. and UHAC.

b. The fees for administrative agents shall be paid as follows:

1. Administrative agent fees related to rental units shall be paid by the developer/owner.

2. Administrative agent fees related to initial sale of units shall be paid by the developer.

3. Administrative agent fees related to resales shall be paid by the seller of the affordable home.

4. Administrative agent fees related to ongoing administration and enforcement shall be paid by the municipality.

c. The Administrative Agent's responsibilities can be found in N.J.A.C. 5:99.

§23-4 **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 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. 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.

§23-5 **APPEALS.**

Appeals from all decisions of an administrative agent appointed pursuant to this Chapter must be filed, in writing, with the municipal housing liaison. A decision by the municipal housing liaison may be appealed to the Division of Local Planning Services within the Department of Community Affairs. A written decision of the Division Director upholding, modifying, or reversing an administrative agent's decision is a final administrative action.

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.

Council President Wolsky asked that the Ordinance be moved, published and posted as a pending Ordinance and the public hearing be set for March 3, 2026. This was seconded by Councilman Cecere. By a roll call vote all were in favor.

Mayor Tempesta asked Clerk DeBlasis to read the title of the next Ordinance:

Ordinance No. 1901

AN ORDINANCE DELETING AND REPLACING SUBSECTION 14 "DEVELOPMENT FEES" OF CHAPTER 18A "LAND USE PROCEDURES" TO UPDATE THE TOWNSHIP'S DEVELOPMENT FEE ORDINANCE IN ACCORDANCE WITH THE DECEMBER 2025 N.J.A.C. 5:99 REGULATIONS AND THE AMENDED FAIR HOUSING ACT

WHEREAS, the Township of West Caldwell filed a Declaratory Judgment Action on January 23, 2025 seeking a certification of compliance with the Fair Housing Act; and

WHEREAS, the West Caldwell Planning Board adopted the 2025 Housing Element & Fair Share Plan for the Fourth Round on June 23, 2025, which was duly endorsed by the Township Council, and timely filed with the Affordable Housing Dispute Resolution Program; and

WHEREAS, the Township has entered into a Mediation Agreement with Fair Share Housing Center that requires all of the implementing documents, including a Development Fee Ordinance, to be adopted by March 15, 2026; and

WHEREAS, new N.J.A.C. 5:99 regulations were adopted in December of 2025; and

WHEREAS, the Township seeks to update its existing Development Fee Ordinance to reflect the new regulations.

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 18A of the Township Code entitled "Land Use Procedures", Subsection 14 entitled "Development Fees." is deleted in its entirety and replaced as follows:

§18A-14 DEVELOPMENT FEES.

a. Purpose.

1. This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the amended Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low-, low- and moderate-income housing in accordance with a Court-approved Spending Plan.

b. Basic Requirements.

1. The municipality previously adopted a development fee ordinance, which established the Municipal Affordable Housing Trust Fund.

2. The municipality shall not spend development fees until the court has approved a plan for spending such fees.

3. Nothing herein shall be construed to create municipal liability for good-faith estimates of equalized assessed value.

c. Definitions.

The following terms when used in this section shall have the following meanings:

AFFORDABLE HOUSING DEVELOPMENT

A development included in a municipality's housing element and fair share plan, and includes, but is not limited to, an inclusionary development, a municipally sponsored affordable housing project, or a 100 percent affordable development. This includes developments with affordable units on-site, off-site, or provided as a payment in-lieu of construction only if such a payment-in-lieu option has been previously approved by the Program or Superior Court as part of the HEFSP.

AFFORDABLE HOUSING MONITORING SYSTEM OR AHMS

The Department's cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

AFFORDABLE HOUSING TRUST FUND OR AHTF

The non-lapsing, revolving trust fund established in the Department pursuant to N.J.S.A. 52:27D-320 and N.J.A.C. 5:43 to be the repository of all State funds appropriated for affordable housing purposes.

COAH OR THE COUNCIL

The Council on Affordable Housing established in, but not of, DCA pursuant to the Act and that was abolished effective March 20, 2024, pursuant to section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1).

DEPARTMENT

The New Jersey Department of Community Affairs.

DEVELOPER

The legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT FEE

Money paid by a developer for the improvement of residential and non-residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and 40:55D-8.1 through 40:55D-8.7 and N.J.A.C. 5:99-3.

EQUALIZED ASSESSED VALUE OR EAV

The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 at P.L. 1973, c. 123 (N.J.S.A. 54:1-35a, 54:1-35b,and 54:1-35c). Estimates at the time of building permit may be obtained by the tax assessor using construction cost estimates. Final EAV shall be determined at project completion by the municipal assessor.

d. Residential Development Fees.

1. Imposed fees.

(a) Residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.

(b) When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5),

developers shall be required to pay a “bonus” development fee of 6.0% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5% of the equalized assessed value on the first two units; and the specified higher percentage of 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

2. Eligible exactions, ineligible exactions and exemptions for residential development.

(a) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made an eligible payment in lieu of on-site construction of affordable units, if permitted by ordinance, or by agreement with the municipality and if approved by a municipality prior to March 20, 2024, when the payment-in-lieu section was removed from the Fair Housing Act.

(b) Developments that have received preliminary or final site plan approval prior to the adoption of this ordinance and any preceding ordinance permitting the collection of development fees shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the construction permit is issued.

(c) No development fee shall be collected for the expansion of an existing one- or two-family dwelling on an individual lot or for any improvement to said properties.

(d) No development fee shall be collected for the demolition and replacement of a residential building resulting from a fire or natural disaster.

e. Non-Residential Development Fees.

1. Imposition of fees.

(a) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

(b) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.

(c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure; i.e., land and improvements; and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

2. Eligible exactions, ineligible exactions and exemptions for non-residential development.

(a) The non-residential portion of a mixed-use inclusionary or market-rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.

(b) The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.

3. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.

4. A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.

5. If a property that was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the municipality as a lien against the real property of the owner.

f. Collection Procedures.

1. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.

2. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF, “State of New Jersey Non-Residential Development Certification/Exemption,” to be completed by the developer as per the instructions provided in the Form N-RDF. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided on Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

3. The construction official responsible for the issuance of a building permit shall notify the tax assessor of the issuance of the first construction permit for a development that is subject to a development fee.

4. Within 90 days of receipt of that notice, the tax assessor shall provide an estimate, based on the plans filed, of the equalized assessed value of the development.

5. The construction official responsible for the issuance of a final certificate of occupancy shall notify the tax assessor of any

and all requests for the scheduling of a final inspection on property that is subject to a development fee.

6. Within 10 business days of a request for the scheduling of a final inspection, the tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

7. Should the municipality fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).

8. Fifty percent (50%) of the development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of certificate of occupancy.

g. Appeal Of Development Fees.

1. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by that board, collected fees shall be placed in an interest-bearing escrow account by the municipality. Appeals from a determination of the board may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

2. A developer may challenge non-residential development fees imposed by filing a challenge with the director of the Division of Taxation. Pending a review and determination by the director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the municipality. Appeals from a determination of the director may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

h. Affordable Housing Trust Fund.

1. A separate, interest-bearing Municipal Affordable Housing Trust Fund shall be maintained by the chief financial officer of the municipality for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

2. The following additional funds shall be deposited in the Municipal Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

(a) Payments in lieu of on-site construction of an affordable unit, where previously permitted by ordinance or by agreement with the municipality and if approved by a municipality prior to March 20, 2024, when the payment-in-lieu section was removed from the Fair Housing Act.

(b) Funds contributed by developers to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;

(c) Rental income from municipally operated units;

(d) Repayments from affordable housing program loans;

(e) Recapture funds;

(f) Proceeds from the sale of affordable units; and

(g) Any other funds collected in connection with the municipal affordable housing program including but not limited to interest earned on fund deposits.

3. The municipality shall provide the Department with written authorization, in the form of a tri-party escrow agreement(s) between the municipality, the Department and the financial institution in which the municipal affordable housing trust fund has been established to permit the Department to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-2.1 et seq.

4. Occurrence of any of the deficiencies outlined in N.J.A.C. 5:99 may result in the Department requiring the forfeiture of all or a portion of the funds in the municipal Affordable Housing Trust Fund.

5. All interest accrued in the housing trust fund shall only be used on eligible affordable housing purposes approved by the Court.

i. Use of Funds.

1. The expenditure of all funds shall conform to a Spending Plan approved by Superior Court. Funds deposited in the municipal Affordable Housing Trust Fund may be used for any activity approved by the Court to address the fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market-to-affordable program; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost-saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by Superior Court and specified in the approved Spending Plan.

2. Funds shall not be expended to reimburse the municipality or activities that occurred prior to the authorization of a municipality to collect development fees.

3. At least a portion of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. A portion of the development fees which provide affordability assistance shall be used to provide affordability assistance to very low-income households.

(a) Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, infrastructure assistance, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.

(b) Affordability assistance for very low income households may include producing very low-income units or buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.

4. No more than 20% of all affordable housing trust funds, exclusive of those collected to fund an RCA prior to July 17, 2008, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare and implement a Housing Element and Fair Share Plan, administer an Affirmative Marketing Program and for compliance with the Superior Court and the Program including the costs to the municipality of resolving a challenge.

j. Monitoring.

1. On or before February 15 of each year, the municipality shall provide annual electronic data reporting of trust fund activity for the previous year from January 1st to December 31st through the AHMS Reporting System. This reporting shall include an accounting of all Municipal Affordable Housing Trust Fund activity, including the sources and amounts of all funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, previously eligible payments in lieu of constructing affordable units on site (if permitted by ordinance or by agreement with the municipality prior to March 20, 2024 when the payment-in-lieu section was removed from the Fair Housing Act), funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income from municipally-owned affordable housing units, repayments from affordable housing program loans, interest and any other funds collected in connection with municipal housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

k. Ongoing Collection of Fees.

1. The ability to impose, collect and expend development fees shall continue so long as the municipality retains authorization from the Court in the form of Compliance Certification or the good faith effort to obtain it.

2. If the municipality fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance or Compliance Certification, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 (C. 52:27D-320).

l. Emergent Affordable Housing Opportunities. Requests to expend affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan shall be made to the Department and shall be in the form of a governing body resolution. Any request shall be consistent with N.J.A.C. 5:99-4.1.

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.

Council President Wolsky asked that the Ordinance be moved, published and posted as a pending Ordinance and the public hearing be set for March 3, 2026. This was seconded by Councilman Cecere. By a roll call vote all were in favor.

Mayor Tempesta asked Clerk DeBlasis to read the title of the next Ordinance:

Ordinance No. 1902

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 20 "ZONING" TO ADD A NEW SUBSECTION 9G "R-9A MULTI-FAMILY RESIDENCE OVERLAY 3 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, on March 20, 2024, Governor Philip D. Murphy signed P.L.2024, c.2 into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.)(hereinafter "Amended FHA"); and

WHEREAS, the West Caldwell Planning Board adopted the 2025 Housing Element & Fair Share Plan on June 23, 2025, which was endorsed by the Township Council on June 24, 2025, pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1 et seq.,

which addresses 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, two challenges were filed during the permitted challenge window, one by Fair Share Housing Center ("FSHC") on August 29, 2025 and one by Danbro Properties, LLC on August 30, 2025; and

WHEREAS, the Township participated in mediation to resolve the concerns raised in the two challenges; and

WHEREAS, the Township has entered into a Mediation Agreement with FSHC to address their issues and said Mediation Agreement requires the Township to create a new inclusionary residential overlay district.

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 and supplemented with the following underlined text:

R-9A Multi-Family Residence Overlay District
R-10 Planned Residence Overlay District

Section 2: Chapter 20 of the Township Code entitled "Zoning", is hereby amended and supplemented with a new Subsection 9G entitled "Multi-Family Residence Overlay District", which shall read as follows:

§20-9G R-9A MULTI-FAMILY RESIDENCE OVERLAY DISTRICT.

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

§20-9G.1 Principal Permitted Uses.

a. Multi-family residential units, including 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.

§20-9G.2 Permitted Accessory Uses.

a. Off-street parking areas.

b. Residential 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.

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

a. Minimum Lot Area – 7 acres.

b. Minimum Lot Width – 300 feet.

c. Minimum Lot Depth – 400 feet

d. Minimum Front Yard Setback – 40 feet. The front yards shall be considered the property lines along Passaic Avenue and Fairfield Avenue.

e. Minimum Side Yard Setback – 25 feet. The side yard shall be considered the common property line with Lot 2 to the south.

f. Minimum Rear Yard Setback – Not applicable.

g. Maximum Building Height – 3 stories and 40 feet.

h. Maximum Building Coverage – 40%

i. Maximum Lot Coverage – 75%

j. Maximum Density – 20 units per acre.

§20-9G.4 Affordable Housing Requirements.

a. A minimum of 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.

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, income distribution, bedroom 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 the Uniform Housing Affordability Controls in effect at the time of application. Affordable units shall comply with the Uniform Housing Affordability Controls in effect at the time of application.

d. 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.

§20-9G.5 Parking and Circulation.

a. Parking shall be provided in accordance with the Residential Site Improvement Standards, except that the specified required parking spaces shall be minimums.

b. Parking spaces shall measure nine feet wide by 18 feet long.

c. Parking areas shall comply with Subsections 20-23.3 and 20-23.5.

§20-9G.6 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 60 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 60 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.

§20-9G.7 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. Seventy-five percent of the perimeter of multi-family buildings and twenty-five percent of the perimeter of stacked townhome 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.

e. Tree removal shall comply with Chapter 24, Tree Protection and Removal Standards.

§20-9G.8 Lighting.

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

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

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

§20-9G.9 Trash.

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

§20-9G.10 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 and 6 feet in height. Said sign may be internally or externally illuminated and shall be set back at least 10 feet from any property line.

Section 3.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 4.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 5.Effective Date.

This Ordinance shall take effect upon approval by the Superior Court in conjunction with Docket No. ESX-L-601-25.

Council President Wolsky asked that the Ordinance be moved, published and posted as a pending Ordinance and the public hearing be set for March 3, 2026. This was seconded by Councilman Cecere. By a roll call vote all were in favor.

INVITATION TO CITIZENS FOR DISCUSSION:

Richard Wilcox spoke about an Ordinance regarding driveways.

ADJOURNMENT:

There being no further business before the Council on a motion from Councilman Cecere and a second by Council President Canale, the meeting adjourned at 6:11 pm. All were in favor.

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Joann DeBlasis, Township Clerk