

TOWNSHIP OF WEST CALDWELL

Ordinance No. 1900

By: Councilman Wolsky

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.