

ORDINANCE

BOROUGH OF NORTH CALDWELL O-7-19

Ordinance Replacing Article XIV “Growth Share” With A New Article Entitled “Affordable Housing Mandatory Set-Aside”

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

Section 1. Article XIV, Sections 107-88 to 107-94, of the Code of the Borough of North Caldwell, which is entitled “Growth Share”, is hereby replaced in its entirety with a new Article entitled “Affordable Housing Mandatory Set-Aside”, which is hereby created and established to read as follows:

Article XIV “Affordable Housing Mandatory Set-Aside”

Section 107-88 Purpose and Scope

- a. This Ordinance amends the Borough land use ordinances by establishing regulations to ensure that any site that benefits from a rezoning, variance or redevelopment plan approved by the Borough, the Borough’s Planning Board, or the Borough’s Zoning Board that results in multi-family residential development of five (5) dwelling units or more produces affordable housing at a set-aside rate of twenty percent (20%) for for-sale affordable units and at a set-aside rate of fifteen percent (15%) for rental affordable units, in accordance with the Borough’s Third Round Housing Element and Fair Share Plan, consistent with the terms of the Settlement Agreement reached with Fair Share Housing Center regarding compliance with the Borough’s affordable housing obligations. This Ordinance will not apply to the Borough’s BAO and FRO Overlay Zones, as said zones already have affordable housing set-aside requirements.

Section 107-89 Affordable Housing Mandatory Set-Aside Requirement

- a. If the Borough or the Borough’s Planning Board or Zoning Board permits the construction of multi-family or single-family attached residential development that is “approvable” and “developable,” as defined at N.J.A.C. 5:93-1.3, the Borough or the Borough’s Planning Board or Zoning Board shall require that an appropriate percentage of the residential units be set aside for low and moderate income households.
- b. This requirement shall apply beginning with the effective date the Ordinance creating this section was adopted to any multi-family or single-family attached residential development, including the residential portion of a mixed-use project, which consists of five (5) or more new residential units, whether permitted by a zoning amendment, a variance granted by the Borough’s Planning Board or Zoning Board, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation.
- c. For any such development for which the Borough’s land use ordinances (e.g. zoning or an adopted Redevelopment Plan) already permitted residential development as of the effective date the Ordinance creating this section was adopted, this requirement shall only apply if the Borough, the Borough’s Planning Board, or the Borough’s Zoning Board permits an increase in approvable and developable gross residential density to at least twice the permitted approvable and developable gross residential density as of the effective date the Ordinance creating this section was adopted.
- d. Nothing in this section precludes the Borough, the Borough’s Planning Board, or the Borough’s Zoning Board from imposing an affordable housing set-aside in a development not required to have a set-aside pursuant to this paragraph consistent with N.J.S.A. 52:27D-311(h) and other applicable law.

- e. For all inclusionary projects, the appropriate set-aside percentage will be twenty percent (20%) for all for-sale projects and fifteen percent (15%) for all rental projects.
- f. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.
- g. This requirement does not apply to any sites or specific zones otherwise identified in the Borough's Settlement Agreement with FSHC, which was executed by the Borough on December 11, 2018, or in the Borough's 2019 Housing Element and Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein. As such, this section will not apply to the Borough's BAO and FRO Overlay Zones, as said zones already have affordable housing set-aside requirements.
- h. Furthermore, this section shall not apply to developments containing four (4) or less dwelling units.
- i. All subdivision and site plan approvals of qualifying residential developments shall be conditioned upon compliance with the provisions of this section.
- j. Where a developer demolishes existing dwelling units and builds new dwelling units on the same site, the provisions of this section shall apply only if the net number of dwelling units is five (5) or more.
- k. All inclusionary projects created under this section must comply with the affordable housing requirements in Article XVI (Affordable Housing Regulations).

Sections 107-90 to 107-94 Purposefully Left Blank

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

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

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

Section 5. After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of North Caldwell for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64.

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

INTRODUCED: July 16, 2019

Moved By: Councilman Raymond
 Seconded By: Council President Santomauro

COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT	COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT
ASTORINO				X	RAYMOND	X			
CHIAIA	X				REES	X			
KESSLER	X				SANTOMAURO	X			

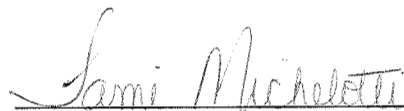
PUBLIC HEARING: August 13, 2019

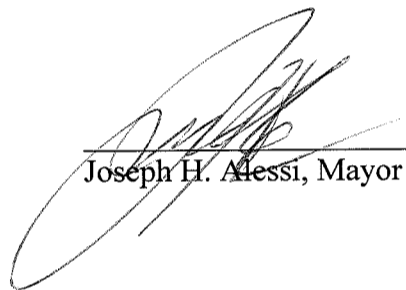
ADOPTED: August 13 2019

Moved By: Councilman Raymond
 Seconded By: Councilman Chiaia

COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT	COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT
ASTORINO				X	RAYMOND	X			
CHIAIA	X				REES	X			
KESSLER				X	SANTOMAURO	X			

ATTEST:


 Tami Michelotti, Berough Clerk


 Joseph H. Alessi, Mayor