

**TOWN OF WEST NEW YORK  
COUNTY OF HUDSON, STATE OF NEW JERSEY**

**ORDINANCE #32/24**

**AN ORDINANCE AMENDING CHAPTER 221 ENTITLED “HOUSING,  
AFFORDABLE” OF THE TOWN OF WEST NEW YORK MUNICIPAL CODE**

**WHEREAS**, pursuant to N.J.S.A. 40:48-2, a municipality may make, amend, repeal and enforce ordinances not contrary to the laws of this State or of the United States, as it may deem necessary and proper for order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants; and

**WHEREAS**, the Town of West New York (the “Town”), is a municipality as defined by Title 40 of the New Jersey Statutes; and

**WHEREAS**, the Mayor and the Board of Commissioners seek to amend Chapter 221, Article I entitled “Mandatory Set Aside” and rename it “Affordable Housing Requirements;” and

**WHEREAS**, the Town wishes to amend Part II: General Legislation, Chapter § 221-2 entitled “Allocation of Affordable Housing” and rename it “Affordable Housing Allocation; In-Lieu and Set-Aside Options” for residential and nonresidential development projects; within the Town of West New York and

**WHEREAS**, the Town additionally seeks to amend Part II: General Legislation, to establish a new § 221-2.1 entitled “Affordable Housing Trust Fund,” to be funded by contributions from residential and nonresidential developers in lieu of set-aside units.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Board of Commissioners of The Town of West New York, as follows:

**SECTION ONE**

Chapter 221, Article I entitled “Mandatory Set Aside” shall be renamed “Affordable Housing Requirements.”

**SECTION TWO**

§221-2 entitled “Allocation of Affordable Housing” shall be renamed “Affordable Housing Allocation; In-Lieu and Set-Aside Options” and shall be replaced as follows:

**§221-2 Affordable Housing Allocation; In-Lieu and Set-Aside Options.**

- A. Residential Developments. The developer of any project creating new residential units, including previously constructed or partially constructed projects for which the affordable housing obligation related thereto, either in whole or in part, and to such extent thereof, has not been satisfied, shall be required to create as set-aside units, or to contribute in lieu, or by any combination thereof, pursuant to the following options, 20% of the number of such new residential units:
1. To build up to 20% of the units as part of the development as follows: 10% of the total dwelling units shall be allocated to low-income and 10% of the total dwelling units applied to moderate-income dwellings; or
  2. To rehabilitate an equal number of existing substandard units in the Town of West New York, or, if no such units exist, to create set-aside units elsewhere in the Town, subject to the approval of the Housing Trust Council; or

3. With the approval of the Housing Trust Council, to create an equal number of senior citizen housing units outside the development but elsewhere within the Town of West New York; or
  4. To contribute to the Affordable Housing Trust Fund, as set forth in §221-2.1.
- B. Nonresidential Developments. The developer of any new nonresidential project containing in excess of 50,000 square feet shall have an obligation to contribute to the Housing Trust Fund, as set forth in §221-2.1.
- C. Special Requirements for Planned Unit Developments. For purposes of determining compliance of a planned development with §221-2, Section A and B above:
1. All housing within the planned development shall be considered a single development for purposes of the set-aside calculations set forth in §221-2(A) above.
  2. Any planned development shall contain at least 250 dwelling units.

### **SECTION THREE**

§221-2.1 entitled “Affordable Housing Trust Fund” is hereby established and shall provide as follows:

#### **§ 221-2.1 Affordable Housing Trust Fund.**

- A. Formation. The Board of Commissioners of the Town of West New York shall establish and maintain an Affordable Housing Trust Fund, to be funded by contributions from residential and nonresidential developers in lieu of set-aside units. The members of the Board of Commissioners, from time to time, shall serve as the trustees of the Affordable Housing Trust Fund and shall have such powers as are necessary and convenient to utilize the trust funds for the purposes of implementing the provisions of the Town’s Affordable Housing Program, as provided within this Chapter.
- B. Developers Contributions. Whenever, under §221-2, a developer is required or permitted to contribute to the Affordable Housing Trust Fund, the amount of the contribution is to be determined as follows:
1. A nonresidential developer required to contribute to the Affordable Housing Trust Fund, shall make a contribution to such fund in the amount of 1% of the equalized assessed value of the nonresidential development.
  2. A residential developer electing to contribute to the Affordable Housing Trust Fund, in lieu of building low- or moderate-income housing, shall make a contribution of \$120,000 in lieu of constructing each required low-income unit and \$80,000 in lieu of constructing each required moderate-income unit, provided that any development which is not granted any exemption or abatement of real estate taxes shall be responsible to make discounted contributions of 80% of the amounts set forth hereinabove in lieu of construction for the units attributable to the development so abated or exempted.
- C. Timing of Contribution. A developer making a contribution to the Housing Trust Fund shall make such contribution as follows:
1. For nonresidential developments, 50% of the estimated contribution to the Housing Trust Fund, based upon the then-estimate by the Tax Assessor of the equalized assessed value of the development, shall be paid at or before the

issuance of the first building permit for the development; and the balance of the contribution to the Housing Trust Fund, based upon the final equalized assessed value of the development as determined by the Tax Assessor, shall be paid at or before the issuance of the first certificate of occupancy for the development.

2. For residential developments, 50% of the total contribution shall be prorated among the total number of housing units in the proposed residential development and such prorated amount shall be paid at or before the issuance of a building permit for each unit. The balance of the required contribution shall be prorated among the number of housing units in the proposed residential development and such prorated amount shall be paid at or before the issuance of a certificate of occupancy for each unit.

D. Deposit of Funds. The Town shall establish and maintain an account for the Housing Trust Fund in such bank licensed to hold trust funds in New Jersey as designated, in writing, by the Town's Housing Trust Council for the purpose of receiving contributions from developers. All contributions paid by developers pursuant to this subsection shall be deposited into this fund.

E. Use of Funds. Money deposited into the Housing Trust Fund may be used for any activity, project or purpose determined by the Town of West New York Board of Commissioners, including any community benefit to address the low- and moderate-income housing and related needs of the Town of West New York. Such activities may include, but are not necessarily limited to: housing rehabilitation, new construction, regional contribution agreements, the roads and infrastructure for low- and moderate-income housing sites, assistance designed to render units more affordable to low- and moderate-income households, any public facility or any improvement thereto, such as, but not limited to, schools, recreational facilities, government offices, police stations, parking garages, transportation systems or facilities, roads, utility infrastructure and systems and the like, and administrative costs necessary to implement the Town's Housing Element and its affordable housing and related projects.

F. Miscellaneous Provisions.

1. Developers of at least 20% low- and moderate-income units in a residential development shall be exempt from paying Affordable Housing Trust Fund contributions.
2. Developers that expand an existing structure by adding more than 5,000 square feet to a building in a previously approved development shall contribute to the Housing Trust Fund. The contribution shall be calculated based on the increase in the equalized assessed value of the improved structure.

#### **SECTION FOUR**

**Severability.** If any term or provision of this Ordinance is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, in whole or in part, such determination shall not affect the validity of the remaining terms and provisions of this Ordinance.

#### **SECTION FIVE**

**Repealer.** To the extent that any provision of the Code of the Town of West New York is found to conflict with this Ordinance, in whole or in part, this Ordinance shall control.

## SECTION SIX

In order to avoid accidental repeal of existing provisions, the Town Clerk and the Corporation Counsel are hereby authorized to change any chapter numbers, article numbers and/or section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing Code.

## SUMMARY OF ORDINANCE

This Ordinance amends Chapter 221 of the Town of West New York Municipal Code of Ordinances entitled "Housing, Affordable" to amend Section 221-2 entitled "Affordable Housing Obligations; In-Lieu and Set-Aside Options and establish a new Section 221-2.1 entitled "Affordable Housing Trust Fund."

**Introduced: September 4, 2024**

## Notice

The foregoing Ordinance was adopted for first reading by the Mayor and Board of Commissioners of the Town of West New York, New Jersey, on **September 4, 2024** and ordered published, for consideration before final passage at a public hearing on **October 4, 2024 at 6:30 p.m.** held remotely or in person. Instructions regarding attendance and participation in the meeting will be posted on the Town's website: <http://www.westnewyorknj.org/>. A copy of this Ordinance has been posted on the bulletin board upon which public notices are customarily posted on in the Town Hall of the Town of West New York, and a copy (at no charge) is available up to and including the time of such meeting to the members of the public of the Town who shall request such copies, at the Office of the Town Clerk in said Town Hall in West New York, N.J.