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December 27, 2021

Dorothy F. McCrosson, Esq.  
McCrosson & Stanton, P.C.  
200 Asbury Avenue  
Ocean City, New Jersey 08226

**Re: In the Matter of the City of Ocean City, Cape May County,**  
Docket No. CPM-L-305-15

Dear Ms. McCrosson:

This letter memorializes the terms of a First Amendment to the July 18, 2018 Settlement Agreement ("Settlement Agreement") reached between the City of Ocean City (the "City" or "Ocean City"), the declaratory judgment plaintiff, and Fair Share Housing Center ("FSHC"), a Supreme Court-designated interested party in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mount Laurel IV), and a defendant-intervenor in this matter.

This First Amendment, when approved by the court following a duly-noticed fairness hearing, shall supersede the July 18, 2018 Settlement Agreement, attached hereto as **Exhibit A**, previously approved by the Court following a fairness hearing, as to the terms specifically amended by this First Amendment.

All terms of the Settlement Agreement not specifically amended by this First Amendment shall remain in full force and effect as previously approved by the Court.

#### **First Amendment Terms**

The City and FSHC hereby agree to the following terms:

1. In Paragraph 6(c) of the Settlement Agreement, the location of the five (5) duplexes that shall be developed by the municipality to create ten (10) municipally sponsored 2- and 3-bedroom affordable family non-age-restricted rental units is revised to be 224 Simpson Avenue (1 duplex), 240-44 Haven Avenue (2 duplexes), and 3303 Bay Avenue (2 duplexes).
  - a. The City agrees and commits to ensure the start of construction of the five (5) duplexes by March 15, 2022, and construction of the duplexes shall be completed by February 15, 2023. The duplexes shall be constructed by a non-profit corporation formed by the Ocean City Housing Authority, and the City shall provide a developer's agreement that conforms with the terms of this First Amendment to the Court, Court Master, and FSHC by March 15, 2022, which shall include a pro forma and construction schedule.

- b. At least five (5) of the ten (10) units developed shall be low-income units, and the other five (5) units may be moderate-income units.<sup>1</sup> Of the five (5) low-income units, there shall be at least two (2) low-income 3-bedroom units.
  - c. All of the affordable units shall be subject to affordability controls of at least thirty (30) years from the date of initial occupancy and affordable deed restrictions as provided for by UHAC, and the affordability controls shall remain unless and until the City, in its sole discretion, takes action to extend or release the unit from such controls after at least thirty (30) years. If the City acts to release the unit from such controls, affordability controls shall remain in effect until the date on which a rental unit shall become vacant due the voluntary departure of the occupant household in accordance with N.J.A.C. 5:80-26.11(b).
  - d. The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include the community and regional organizations identified in the July 18, 2018 Settlement Agreement between City and Fair Share Housing Center, and it shall also include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.
2. In the July 18, 2018 Settlement Agreement, the City committed to create at least eighty (80) units of 100% affordable housing through a partnership with the Ocean City Housing Authority to expand existing affordable housing stock. These eighty (80) units consist of at least twenty (20) age-restricted affordable rental units to be developed at Bayview Manor Site (Block 605, Lot 1), forty (40) affordable family non-age-restricted rental units at Peck's Beach Village North (Block 310, Lot 14 & Block 309, Lots 1-2), and twenty (20) affordable family non-age-restricted rental units at Peck's Beach Village South (Block 409, Lot 1 & Block 410, Lot 12).
- a. In light of delays associated with the COVID-19 pandemic, the timing of the phases of these eighty (80) new affordable units shall be adjusted as follows:
    - i. **Phase I:** The OCHA has replaced existing senior housing units at Peck's Beach Village – North with 20 new senior rental units at the Bayview Manor site (601 West Avenue) in a new building known as Speitel Commons. This has been completed.
    - ii. **Phase II:** The 20 Senior households who previously resided at Peck's Beach Village-North have been moved into the new Speitel Commons units. A contract for the demolition of the old senior units at Peck's Beach Village – North has been awarded. Demolition shall be completed by January 15, 2022.
    - iii. **Phase III and Phase IV:** These two phases have been combined into one phase which will entail the construction of sixty (60) new affordable family non-age-restricted rental units. Peck's Beach Village-North is intended to include at least thirty (30) units, with the remaining units to be constructed at Peck's Beach Village-South. The construction of the sixty (60) new

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<sup>1</sup> "Low-income" and "moderate-income" shall be defined as in the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. ("UHAC"). Very-low-income shall be defined as in the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. ("FHA"), for households earning thirty percent (30%) or less of the area median income.

affordable family on-age-restricted rental units shall be completed by July 1, 2024.

b. The following bedroom and income distribution requirements shall apply to the eighty (80) affordable units.

- i. The twenty (20) age-restricted affordable units shall fully comply with UHAC, including but not limited to the required income distribution, with the sole exception that thirteen percent (13%) of the affordable units shall be required to be deed restricted for very-low-income households earning thirty percent (30%) or less of the median income.
- ii. The sixty (60) affordable family non-age-restricted rental units shall fully comply with UHAC, including but not limited to the required bedroom and income distribution, with the sole exception that at least ten (10) of the units shall be required to be deed restricted for very-low-income households earning thirty percent (30%) or less of the median income.<sup>2</sup> The very-low-income units shall be proportionately distributed within each bedroom distribution, which means that there shall be no more than two (2) very-low-income 1-bedroom units, at least two (2) very-low-income 3-bedroom units, and at least three (3) very-low-income 2-bedroom units, and the remaining four (4) very-low-income units may be either 2- or 3-bedroom units.
- iii. All of the affordable units shall be subject to affordability controls of at least thirty (30) years from the date of initial occupancy and affordable deed restrictions as provided for by UHAC, with the sole exception that very low income shall be defined as at or below 30 percent of median income pursuant to the Fair Housing Act, and the affordability controls shall remain unless and until the City, in its sole discretion, takes action to extend or release the unit from such controls after at least thirty (30) years. If the City acts to release the unit from such controls, affordability controls shall remain in effect until the date on which a rental unit shall become vacant due the voluntary departure of the occupant household.
- iv. All of the affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include the community and regional organizations identified in the July 18, 2018 Settlement Agreement between City and Fair Share Housing Center, and it shall also include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.
- v. Prior to the Amended Fairness and Final Compliance Hearing, the City shall provide written confirmation from the Ocean City Housing Authority that the affordable units shall comply with the above.

3. This First Amendment must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69

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<sup>2</sup> The number of very-low-income units has been adjusted from eight (8) to ten (10) due to the lack of very-low-income units amongst the ten (10) affordable units created by the City's municipally sponsored duplex program.

(Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986), and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996).

4. The City and FSHC agree to request that the Court conduct the review this First Amendment and the City's compliance at a joint Amended Fairness and Final Compliance Hearing. The parties shall request that the Amended Fairness and Final Compliance Hearing be held on or before April 15, 2022. The City shall present its planner as a witness at the hearing.
5. An essential term of this First Amendment is that the City shall complete all action required herein, by the July 18, 2018 Settlement Agreement, and the Council on Affordable Housing's Rules -- including adopting its amended Housing Element and Fair Share Plan, resolutions, ordinances, and other compliance documentation -- at least thirty (30) days before the Amended Fairness and Final Compliance Hearing. This documentation shall be provided to FSHC, the Court, and the Court Master at least thirty (30) days before the Amended Fairness and Final Compliance Hearing.
6. If an appeal is filed of the Court's approval or rejection of this First Amendment, the parties agree to defend the First Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of this First Amendment if it is approved before the Law Division unless and until an appeal of the Law Division's approval is successful, at which point the parties reserve their right to rescind any action taken in anticipation of the Law Division's approval. All parties shall have an obligation to fulfill the intent and purpose of this First Amendment.
7. In view of the additional time and resources required to be expended by FSHC in this matter, including to negotiate and to defend this First Amendment, the City agrees to pay FSHC's additional attorney's fees and costs in the amount of \$5,000 within thirty (30) days of this Agreement.
8. Unless otherwise specified, it is intended that the provisions of this First Amendment are to be severable. The validity of any article, section, clause or provision of this First Amendment shall not affect the validity of the remaining articles, sections, clauses or provisions hereof or the Settlement Agreement.
9. This First Amendment may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Cape May County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees and costs.
10. The City and FSHC acknowledge that each has entered into this First Amendment on its own volition without coercion or duress after consulting with its counsel, that each person to sign this First Amendment is the proper person and possesses the authority to sign the First Amendment, that this First Amendment and the FSHC Settlement Agreement contains the entire understanding of the City and FSHC and that there are no representations, warranties, covenants or undertakings other than those expressly set forth in writing therein.
11. The City and FSHC acknowledge that this First Amendment was not drafted by the City and FSHC, but was drafted, negotiated and reviewed by representatives of the City and

FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The City and FSHC expressly represent that: (a) it has been represented by counsel in connection with negotiating the terms of this First Amendment; and (b) it has conferred due authority for execution of this First Amendment upon the persons executing it.

12. This First Amendment may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same First Amendment.
13. All other terms and conditions of the July 18, 2018 Settlement Agreement not specifically amended by this First Amendment shall remain in full force and effect and shall be incorporated as if fully set forth at length herein.
14. The First Amendment and the Settlement Agreement constitute the entire agreement between the City and FSHC hereto and supersedes all prior oral and written agreements between the City and FSHC with respect to the subject matter hereof except as otherwise provided herein.
15. The effective date of this First Amendment shall be the date upon which Fair Share Housing Center and the City have executed and delivered this First Amendment.

**TO FSHC:**

Adam M. Gordon, Esq.  
Fair Share Housing Center  
510 Park Boulevard  
Cherry Hill, New Jersey 08002  
Phone: (856) 665-5444  
Telecopier: (856) 663-8182  
Email: adamgordon@fairsharehousing.org

**TO THE CITY:**

Dorothy F. McCrosson, Esq.  
McCrosson & Stanton, P.C.  
200 Asbury Ave.  
Ocean City, New Jersey 08226  
Phone: 609 399 2411  
Email: DMcCrossonLaw@comcast.net

**WITH A COPY TO THE  
MUNICIPAL CLERK:**

Melissa Rasner  
Municipal Clerk  
861 Asbury Avenue  
Ocean City NJ 08226  
Telecopier: 609-399-6366

**IN WITNESS WHEREOF**, the Parties hereto have caused this First Amendment to be properly executed, their corporate seals affixed and attested and this First Amendment to be effective as of the Effective Date.

Sincerely,

Adam M. Gordon, Esq.  
Executive Director of Fair Share Housing Center

Witness: Shula Cattelli

Dated: 12/27/2021

**On behalf of the City of Ocean City, with the authorization of the governing body:**

Witness/ Attest:

CITY OF OCEAN CITY

Melissa Rasner  
Melissa Rasner, Municipal Clerk

Jay A. Gillian, Mayor

Dated: 12/27/2021

**Exhibit A:**  
**July 18, 2018 Settlement Agreement**  
**Between Ocean City and Fair Share Housing Center**



Peter J. O'Connor, Esq.  
Kevin D. Walsh, Esq.  
Adam M. Gordon, Esq.  
Laura Smith-Denker, Esq.  
David T. Rammier, Esq.  
Joshua D. Bauers, Esq.

July 18, 2018

Dorothy F. McCrosson, Esq.  
McCrosson & Stanton P.C.  
200 Asbury Ave.  
Ocean City, NJ 08226

**Re: In the Matter of the City of Ocean City, County of Cape May, Docket  
No. CPM-L-305-15**

Dear Ms. McCrosson:

This letter memorializes the terms of an agreement reached between the City of Ocean City (the City or "Ocean City"), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015)(Mount Laurel IV) and, through this settlement, a defendant in this proceeding.

#### **Background**

Ocean City filed the above-captioned matter on July 7, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. Through the declaratory judgment process, the City and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

#### **Settlement terms**

The City and FSHC hereby agree to the following terms:

1. FSHC agrees that the City, through the adoption of a Housing Element and Fair Share Plan conforming with the terms of this Agreement (hereafter "the Plan") and through the implementation of the Plan and this Agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when Third Round fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.
3. FSHC and Ocean City hereby agree that the City's affordable housing obligations are as follows:



Present Need/Rehabilitation Share (per Kinsey Report, <sup>1</sup> subject to recalculation in accordance with the terms of this agreement)	105
Prior Round Prospective Need (pursuant to N.J.A.C. 5:93)	411
Third Round (1999-2025) Prospective Need (per Kinsey Report, 20% cap applied)	1276

4. For purposes of this Agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).
5. The City's efforts to meet its present need include the following: The Present Need/Rehabilitation Share obligation, as calculated in the Kinsey Report, is 105 units. The parties to this Agreement agree that the City may seek to demonstrate, via a survey conducted in accordance with applicable law, that it is entitled to a reduction of its Present Need obligation. Ocean City will retain either Mullin & Lonergan or TRIAD Associates to conduct an exterior conditions survey in accordance with applicable law. The survey shall be completed within 120 days of the entry of an order approving this Agreement. If the parties agree regarding the adjusted Present Need, they shall advise the court regarding that fact prior to the compliance hearing and request that the court enter an order establishing the Present Need at the agreed upon number, subject to the proceedings at the compliance hearing. If the parties disagree regarding the Present Need, they shall request that the court appoint a planner to evaluate and report regarding the survey. The municipality agrees to address the Present Need established by the court in accordance with applicable law.
6. As noted above, the City has a Prior Round Prospective Need of 411 units and a Third Round Prospective Need of 1276 units. The parties agree that the combined Prospective Need of 1687 will be addressed as follows:
  - a. The municipality previously received a vacant land adjustment (VLA) from the Council on Affordable Housing (COAH) by resolution dated October 4, 2000. The parties recognize that the previous COAH-calculated VLA should be continued and updated.
  - b. The parties have agreed to a realistic development potential (RDP) of 59 units based on the following calculations:

Realistic Development Potential	Units
Prior Round RDP - October 4, 2000 COAH substantive certification	8
Block 1606, Lots 2-6 (2.7 acres) and Block 1506, Lot 1 (0.62-acre) - $3.32 \times 20 = 99.6$ @ 20% set-aside = 20	20
Block 702, Lots 19 and 23 (.84 & .17 acres) -- 1.01 acres x $64.36^* = 65$ @ 20% set-aside = 13	13

<sup>1</sup> David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, May 2016.

Block 70.13, Lot 1, 101-23 Bay Rd, .84 acre x 6 = 5 @ 20% set-aside = 1	1
Block 1206, Lot 2, 1205 Haven Ave., .66 acre x 7 = 4.62 @ 20% set-aside = 1	1
Ocean City Housing Authority (OCHA) redevelopment parcels (20 + 40 + 20 units = 80/5 = 16)	16
<b>Total:</b>	<b>59</b>

\*This density is solely for the purposes of settlement and is no indication that the City believes this increased density is appropriate at this location.

c. The 59-unit RDP will be satisfied as follows:

Developments/Compliance Mechanisms	Details/Status	Units	Bonuses
613 Simpson Avenue and 626 Simpson Avenue, single-family for sale homes, Block 607 Lot 10 and Block 608, Lot 15 respectively.	These 2 family for-sale units were developed in 2002. During the compliance phase of the litigation, the municipality will provide evidence of affirmative marketing and the deed restriction. The municipality will also provide information regarding the low/moderate-income split.	2	
Municipally sponsored family units - 224 Simpson Avenue - a duplex (2 units); 240-44 Haven Avenue - 2 duplexes (4 units); 36th and Bay Avenue Street End - 2 duplexes (4 units)	The municipality agrees to develop 10 affordable two- and three-bedroom family rental units at the identified locations, as set forth more fully in paragraph 8 below.	10	
Market-to-affordable program	The municipality agrees to acquire and make affordable, either as for-sale or rental units, 3 affordable homes through a market-to-affordable program, as set forth more fully in paragraph 8 below. Attached hereto as Exh. D is information that evidences the availability of units that will be used in this program.	3	
100% affordable senior rentals at Bayview Manor site (601 West Avenue), Block 605, Lot 1	This will be developed in collaboration with the OCHA, as set forth more fully in paragraph 8 below.	20	
100% affordable family rental at Peck's Beach Village - North site, Block 310, Lot 14 & Block 309, Lots 1 & 2	This will be developed in collaboration with the OCHA, as set forth more fully in paragraph 8 below.	40	15
100% affordable family rental at Peck's Beach Village - South site, Block 409, Lot 1 & block 410, Lot 12	This will be developed in collaboration with the OCHA, as set forth more fully in paragraph 8 below.	20	

Developments/Compliance Mechanisms	Details/Status	Units	Bonuses
		95	15
	<b>Total:</b>	<b>110</b>	

- d. The 110 credits referenced above, along with 60 units from the Prior Cycle Wesley by the Bay development, Block 2406, Lots 1 & 2, subtracted from the combined Prospective Need of 1579, results in an unmet need of 1469 units, which shall be addressed through the following mechanisms:
- i. *Inclusionary Housing Option in Business Zone Districts* – Ocean City will increase the density and bulk standards for residential uses in business zones and require an inclusionary component. The zoning ordinances adopted to implement this response to unmet need will (1) continue to not permit dwelling units to occupy the first (grade-level) floor of any building in the Neighborhood Business (NB) and 34th Street Gateway (GW) zones; (2) increase the density in the Neighborhood Business (NB) and 34th Street Gateway (GW) zones from the present about 10.9 units/acre to 16 units/acre and increase maximum building height to three habitable floors; (3) increase the density in the Central Business (CB) and Central Business-(CB-1) zones from the present about 30 units per acre to 40 units per acres and increase the maximum building height to four habitable floors; and (4) add residential uses to the conditional uses in the Drive-In Business (DB) zone, subject to the same conditional use, density, and bulk requirements as for residential uses in the CB and CB-1 zones. The amended ordinances are attached to this Agreement as Exh. A. A map showing the business zones is attached as Exh. B.
  - ii. *Inclusionary R-2 Zone Districts Assemblage Incentive Overlay Zone* – Ocean City will adopt an inclusionary overlay zone applicable to all R-2 zone districts, triggered by an assemblage of at least 25% of the land area of a block that is designated R-2 zone district. The zoning ordinances adopted to implement this response to unmet need will (1) increase the density from the current approximately 20 units/acre in duplexes (12 to 28 units/acre depending in lot location on the block) to 30 units/acre; (2) modify bulk standards and increase the maximum building height to three habitable stories; and (3) expand permitted uses to include multifamily housing. The amended ordinances are attached to this Agreement as Exh. C.
  - iii. *Town-wide set-aside ordinance* – The municipality agrees to adopt an ordinance that provides that an affordable housing set-aside of 20%, if the affordable units will be for-sale, and 15%, if the affordable units will be for rent, shall be required for all new multi-family residential developments of five (5) or more additional units (over and above those already permitted as of right) that are developed at a density of six (6) or more units per acre which developments become permissible through either a use variance, a density variance increasing the permissible density at the site, a rezoning permitting multi-family residential housing where not previously permitted or a new or amended redevelopment plan or a new or amended rehabilitation plan. This does not give any developer the right to any such rezoning, variance, redevelopment designation or redevelopment plan

approval or other relief, or establish any obligation on the part of the municipality to grant such rezoning, variance, redevelopment designation or redevelopment plan approval or other relief. This provision shall not apply to sites zoned for inclusionary residential development or for which an inclusionary residential redevelopment plan has been adopted consistent with the municipality's Court-approved Housing Element and Fair Share Plan, which sites shall comply with the applicable adopted zoning. No site shall be permitted to be subdivided so as to avoid compliance with this requirement.

7. The City will provide a realistic opportunity for the development of additional affordable housing that will be developed or created through means other than inclusionary zoning in the following ways and in accordance with the following requirements:
  - a. Municipally sponsored family/market to affordable program - 224 Simpson Avenue - a duplex (2 units); 240-44 Haven Avenue - 2 duplexes (4 units); 36th and Bay Avenue Street End - 2 duplexes (4 units); market-to-affordable program (3 units). The municipality agrees to develop 10 affordable two- and three-bedroom family units at the identified locations. Ocean City commits to create within 2 years of court approval of the settlement agreement thirteen (13) units through a combination of municipally-sponsored construction of units and the implementation of a market-to-affordable program. Ocean City shall comply with the applicable COAH rules at N.J.A.C. 5:97-6.7 (municipally sponsored affordable housing developments) and N.J.A.C. 5:97-6.9 (market-to-affordable) and shall submit the required minimum documentation for these two compliance mechanisms prior to the fairness hearing in this matter. Attached hereto as Exh. D is information that evidences the availability of units that will be used in this program.
  - b. 80 units of 100% affordable housing through a partnership with the OCHA to redevelop and expand affordable housing stock.
    - i. This partnership will include the following: 100% senior rental at Bayview Manor site (601 West Avenue), Block 605, Lot 1 (20 units); 100% affordable family rental at Peck's Beach Village – North site, Block 310, Lot 14 and Lot 309, Lots 1 & 2 (40 units); 100% affordable family rental at Peck's Beach Village – South site, Block 409, Lot 1 and Block 410, Lot 12 (20 units).
    - ii. The City will enter into a Shared Services Agreement or Partnership Agreement with the OCHA through which the City commits to financially support the Housing Authority's plan to redevelop and expand affordable housing stock on land owned by the OCHA within 120 days of court approval of this Settlement Agreement. A map showing the lots is attached to this Agreement as Exh. E.
    - iii. The four phases of this partnership are as follows:
      1. Phase I: The OCHA will replace existing senior housing units at Peck's Beach Village – North with 20 new senior rental units at the Bayview Manor site (601 West Avenue). It is the expectation that this will be completed by July 1, 2020, and the municipality agrees to take all reasonable steps to meet this completion date.
      2. Phase II: Once the existing 20 Senior households have been moved into the new Bayview Manor units, the existing senior units at Peck's Beach Village – North would be demolished.

3. Phase III: On the then cleared, former Peck's Beach Village – North senior housing site, 40 new family rental units would be constructed to replace and upgrade the Housing Authority's 40 existing family units at Peck's Beach Village – South (between 4<sup>th</sup> and 5<sup>th</sup> Streets), which will then be demolished. If the cleared site cannot accommodate all 40 units, some units will be built on the northerly part of the family site (directly across 4<sup>th</sup> Street), where the Administrative Office, daycare center and maintenance shed, plus parking lot, are currently located, and those facilities will be relocated elsewhere if necessary. It is the expectation that this will be completed by July 1, 2023, and the municipality agrees to take all reasonable steps to meet this completion date.
  4. Phase IV: On the site of the Peck's Beach Village – South (between 4<sup>th</sup> and 5<sup>th</sup> Streets), the City will develop at least 20 new family rental units. It is the expectation that this will be completed by July 1, 2025, and the municipality agrees to take all reasonable steps to meet this completion date. Phase IV shall be developed in a manner to permit a minimum of 20 additional family rental units to be developed in the future, after July 1, 2025.
- iv. The four phase development approach will be implemented so that replacement units are constructed and first made available to existing tenants being displaced through demolition activities before such tenants are required to vacate their current units, so that there is no need for temporary relocation of the existing public housing tenants. The replacement units will be made available to existing lower-income residents of OCHA housing without any additional eligibility screening.
  - v. The parties recognize that Ocean City and the OCHA may rely on the Rental Assistance Demonstration Program ("RAD"). The parties agree that all United States Department of Housing and Urban Development requirements regarding replacement of public housing units that are to be demolished and existing tenants' rights to relocate to the replacement units without any additional eligibility screening, as well as the other requirements of the RAD program, will be applicable to the redevelopment of OCHA's public housing if that program is used.
- c. In accordance with N.J.A.C. 5:93-5.5, the City recognizes that it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary affordable housing developments, including for all compliance mechanisms referenced in this paragraph. The municipality is required to provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved. The City shall demonstrate its satisfaction of these obligations within 120 days of court approval of this Settlement Agreement.
  - d. In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, including all compliance mechanisms referenced in this paragraph, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The parties agree that the schedules required for each of the

compliance mechanisms addressed in this section shall comply with the terms of this Agreement and that schedules required by this subparagraph shall use the completion dates included in 7biii 1-4, above. The municipality shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The City shall demonstrate its satisfaction of these obligations within 120 days of court approval of this Settlement Agreement.

8. The City agrees to require 13% of all units referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 1, 2008, to be very low income units, with half of the very low income units being available to families. The City shall demonstrate its satisfaction of these obligations within 120 days of court approval of this Settlement Agreement.
9. The City shall meet its remaining Prior Round and Third Round Prospective Need, including unmet need, in accordance with the following standards:
  - a. Bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
  - b. At least 50 percent of the units addressing the remaining Prior Round and Third Round Prospective Need, including unmet need, shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
  - c. At least twenty-five percent of the remaining Prior Round and Third Round Prospective Need, including unmet need, shall be met through rental units, including at least half in rental units available to families.
  - d. At least half of the units addressing the remaining Prior Round and Third Round Prospective Need, including unmet need, in total must be available to families.
  - e. The City agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its total fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation, including Prior Cycle credits other than the Senior units for which the municipality is receiving credits in this agreement. The municipality agrees not to seek further credit for age-restricted housing until the number of non-senior for which it is entitled to credit meets or exceeds 75% of the total number of affordable units for which the municipality is entitled to credit.
10. The City shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Mainland/Pleasantville, Mizpah, Atlantic City, and Cape May County Branches of the NAACP, and the Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of the affirmative marketing plan, provide notice to those organizations of all available affordable housing units. The City also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.
11. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall

be required to be at 30 percent of median income, and all other applicable law. The City as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. Income limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the City annually within 30 days of the publication of determinations of median income by HUD as follows:

- a. Regional income limits shall be established for the region that the City is located within (i.e. Region 6) 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. The resulting product for each county within the housing region is summed. The sum is 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 percent 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 percent 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 percent 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.
- b. The income limits attached hereto as Exh. F are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2017, and shall be utilized until the City updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
- c. 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 City annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) 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.
- d. The parties agree to request the Court prior to or at the fairness hearing in this matter to enter an order implementing this paragraph of this Agreement.

12. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.

13. As an essential term of this Agreement, within 120 days of Court's approval of this Agreement, the City shall introduce an ordinance or ordinances providing for the amendment of the City's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning contemplated herein and adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement.

14. The parties agree that if a decision of a court of competent jurisdiction in Cape May County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the City for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total prospective Third Round need obligation established in this Agreement, and if that calculation is memorialized in an unappealable final judgment, the City may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the City shall be obligated to adopt a Housing Element and Fair Share Plan that conforms to the terms of this Agreement and to implement all compliance mechanisms included in this Agreement, including by adopting or leaving in place any site specific zoning adopted or relied upon in connection with the Plan adopted pursuant to this Agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the City's obligation below that established in this Agreement does not provide a basis for seeking leave to amend this Agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the City prevails in reducing its prospective need for the Third Round, the City may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.
15. The Township shall prepare a Spending Plan within the period referenced above, subject to the review of FSHC and approval of the Court, and reserves the right to seek approval from the Court that the expenditures of funds contemplated under the Spending Plan constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). On the first anniversary of the execution of this Agreement, which shall be established by the date on which it is executed by a representative of the City, and on every anniversary of that date thereafter through the end of the period of protection from litigation referenced in this Agreement, the City agrees to provide annual reporting of 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 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 source and amount of funds collected and the amount and purpose for which any funds have been expended.
16. On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the City 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 posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
17. The Fair Housing Act includes two provisions regarding action to be taken by the City during the ten-year period of protection provided in this Agreement. The City agrees to comply with those provisions as follows:



- a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the City will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of the 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. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced 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.
  - b. 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 this Agreement, and every third year thereafter, the City will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.
18. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this Agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
19. The parties will request that the Superior Court schedule hearings to review this proposed settlement and to evaluate the municipality's compliance with the proposed settlement as follows:
  - a. This settlement agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The City shall present its planner as a witness at this hearing. The parties agree to support this settlement at the fairness hearing. If the settlement agreement is rejected by the Court at a fairness hearing it shall be null and void.
  - b. In the event the Court approves this proposed settlement, the parties will request that the court schedule a compliance hearing approximately 150 days after the fairness hearing. At the compliance hearing, the municipality will present all information required by this Agreement, adopted ordinances, any necessary resolutions and manuals, the Housing Element and Fair Share Plan, and the Spending plan for review and approval by the Special Master and the court. As part of the order finding that the municipality has complied with the terms of this agreement and taken all necessary steps, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's

decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025.

20. The City agrees to pay FSHC's attorneys fees and costs in the amount of \$15,000 within thirty (30) days of the Court's approval of this Agreement pursuant to a duly-noticed fairness hearing.
21. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of this Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful, at which point the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
22. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Cape May County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees.
23. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.
24. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
25. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
26. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.
27. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
28. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.
29. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.

30. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.
31. No member, official or employee of the City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
32. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
33. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

**TO FSHC:**

Kevin D. Walsh, Esq.  
Fair Share Housing Center  
510 Park Boulevard  
Cherry Hill, NJ 08002  
Phone: (856) 665-5444  
Telecopier: (856) 663-8182  
E-mail: kevinwalsh@fairsharehousing.org


**TO THE CITY:**

Dorothy F. McCrosson, Esq.  
McCrosson & Stanton P.C.  
200 Asbury Ave.  
Ocean City, NJ 08226  
Telecopier: 609-398-7838  
Email: DMcCrossonLaw@comcast.net

**WITH A COPY TO THE  
MUNICIPAL CLERK:**

Melissa Rasner  
Municipal Clerk  
861 Asbury Avenue  
Ocean City NJ 08226  
Telecopier: 609-399-6366

Please sign below if these terms are acceptable.

Sincerely,  
  
Kevin D. Walsh, Esq.  
Counsel for Intervenor/Interested Party  
Fair Share Housing Center

On behalf of the City of Ocean City, with the authorization  
of the governing body:



Dated: 7/18/18

## ORDINANCE NO. 18-

### AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER XXV, ZONING AND LAND DEVELOPMENT OF THE REVISED ORDINANCES OF THE CITY OF OCEAN CITY

#### Inclusionary Housing Option in Business Zone Districts

BE IT ORDAINED by the Mayor and Council of the City of Ocean City, County of Cape May, State of New Jersey, as follows.

#### Section 1.

**Section 25-208.2.5 Residential Dwelling Units** of Chapter XXV "Zoning and Land Development" of the Revised General Ordinances of the City of Ocean City, New Jersey is hereby amended as follows:

#### **25-208.2.5 Residential Dwelling Units.**

**Editor's Note:** Former subsection 25-208.2.5, Hotels and Motels, previously codified herein and containing portions of Ordinance No. 06-33, was repealed in its entirety by Ordinance No. 07-37.

Residential dwelling units may be permitted as a conditional use within those zones specified, subject to the following:

- a. Residential dwelling units shall not occupy any part of the first (grade-level) floor of any building, except where specifically permitted by this Ordinance.
- b. Eating establishments including but not limited to cafes, coffee shops, luncheonettes, pizzerias, restaurants and snack shops, candy, nut, confectionery stores, and bakeries shall not be prohibited or limited at any time or by any means including, but not limited to conditions contained within a master deed, deed restriction, Certificate of Occupancy, Mercantile License, Certificate of Zoning Compliance or other instrument. This requirement shall be memorialized in the decision and resolution approving the site plan and shall be promptly recorded thereafter.
- c. *Density.* The maximum permitted Base density, Inclusionary density, Inclusionary Building Height and Habitable Stories within the Neighborhood Business Zone and 34th Street Gateway Zone shall be as follows:

<i>Lot Area</i>	<i>Base Density</i>	<i>Inclusionary Density (Dwelling Units/Acre)<sup>1</sup></i>	<i>Maximum Inclusionary Building Height, Habitable Stories</i>
Up to 3,999 sf	1 dwelling unit	NA	NA
4,000 sf and greater	1 dwelling unit/each 2,000 sf of lot area	16	34 FT 3

d. *Density in the Central Business (CB) Zone, Central Business-1 (CB-1 Zone) and Drive-in Business (DB) Zone.* The maximum permitted Base density, Inclusionary density, Inclusionary Building Height and Habitable Stories in the Central Business (CB) Zone, Central Business-1 (CB-1) Zone and Drive-in Business (DB) Zone shall be as follows:

<i>Zone District</i>	<i>Base Density (Dwelling Units/Acre)</i>	<i>Inclusionary Density (Dwelling Units/Acre)<sup>2</sup></i>	<i>Maximum Inclusionary Building Height, Habitable Stories</i>
Central Business (CB)	30	40	40 FT 4
Central Business (CB-1)	30 33 (West Avenue only)	40	40 FT 4
Drive-in Business (DB)	30	40	40 FT 4

e. Off-street parking spaces shall be provided as required by the Residential Site Improvement Standards (NJAC 5:21 et seq.).

f. Inclusionary Housing Requirements.

1. **Maximum Affordable Housing Set-aside**

- (a) Sale Units - The maximum affordable housing set-aside applied to sale units is twenty (20) percent of the total number of units in the development.
- (b) Rental Units - The maximum affordable housing set-aside applied to rental units is fifteen (15) percent of the total number of units in the development.

<sup>1</sup> Development utilizing the Inclusionary Density shall comply with Section 25-208.2.5f.

<sup>2</sup> Development utilizing the Inclusionary Density shall comply with Section 25-208.2.5f.



## 2. Construction of Affordable Housing Units

Developers shall construct the affordable units required by this ordinance as follows:

- (a) On the subject site;
- (b) Elsewhere in the municipality as approved by the Planning Board or Zoning Board of Adjustment;
- (c) Payment in lieu of construction providing the whole or fractional affordable units required, subject to the following:
  - (1) Payments in lieu of constructing affordable units may represent fractional affordable units. The affordable housing requirement shall not be rounded.
  - (2) The zoning ordinance may include specific criteria to be met for a development to be eligible to provide a payment in lieu. Examples of such criteria include, but are not limited to, minimum development size thresholds or environmental or site configuration concerns. Once criteria are established by ordinance, exercising the option shall be at the developer's discretion.
  - (3) The amount of payments in lieu of constructing affordable units on site shall be \$182,859.
  - (4) Payments in lieu of constructing affordable units shall be deposited into an affordable housing trust fund pursuant to N.J.A.C. 5:97-8.4 and subject to the provisions thereof.
  - (5) Payments in lieu of constructing affordable housing shall not be permitted where affordable housing is not required. Zoning that does not require an affordable housing set-aside or permit a corresponding payment in lieu may be subject to a development fee ordinance pursuant to N.J.A.C. 5:97-8.3.
- (d) Affordable housing units shall be built in accordance with the following schedule:

Percentage of Market-rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
25	0
25 + 1 unit	10

50	50
75	75
90	10

- (e) To the extent feasible, developers shall fully integrate the low- and moderate-income units with the market units.
- (f) Affordable units shall utilize the same heating source as market-rate units within the inclusionary development and have access to all community amenities available to market-rate units and subsidized in whole by association fees.
- (g) The first floor of all townhouse dwelling units and all other multistory dwelling units comply with N.J.A.C. 5:97-3.14.
- (h) The affordable units shall comply with N.J.A.C. 5:97-9 and UHAC.

(Ord. #07-37, §3; Ord. #07-31, §3; Ord. #08-01, §2; Ord. #10-09, §6; Ord. #14-31; Ord. #2016-15 §5)

## **Section 2.**

This Ordinance shall take effect in the time and manner prescribed by law.

\_\_\_\_\_  
Jay A. Gillian, Mayor

\_\_\_\_\_  
Peter V. Madden, Council President

The above Ordinance was passed by the Council of Ocean City, New Jersey, at a meeting of said Council held on the \_\_\_ day of \_\_\_\_\_, **2018**, and was taken up for a second reading and final passage at a meeting of said Council held on the \_\_\_ day of \_\_\_\_\_, 2018, in Council Chambers, City Hall, Ocean City, New Jersey, at seven o'clock in the evening.

\_\_\_\_\_  
Melissa G. Rasner, City Clerk



**Summary -**

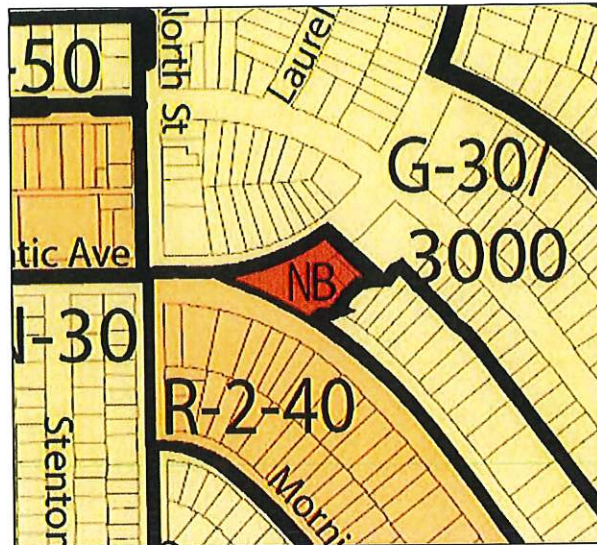
The adoption of this overlay ordinance is part of Ocean City's Affordable Housing strategy. This ordinance will increase the density and bulk standards for residential uses in business zones for projects which require an inclusionary component. Dwelling units are still not permitted to occupy the first (grade-level) floor of any building in the Neighborhood Business (NB) and 34th Street Gateway (GW) zones. For a project which provides affordable housing units at a site located in a b, this ordinance increases the density in the Neighborhood Business (NB) and 34th Street Gateway (GW) zones from the present about 10.9 units/acre to 16 units/acre and increase maximum building height to three habitable floors; increases the density in the Central Business (CB) and Central Business-(CB-1) zones from the present about 30 units per acre to 40 units per acres; increases the maximum building height to four habitable floors; and adds residential uses to the conditional uses in the Drive-In Business (DB) zone, subject to the same conditional use, density, and bulk requirements as for residential uses in the CB and CB-1 zones.

July 18, 2018

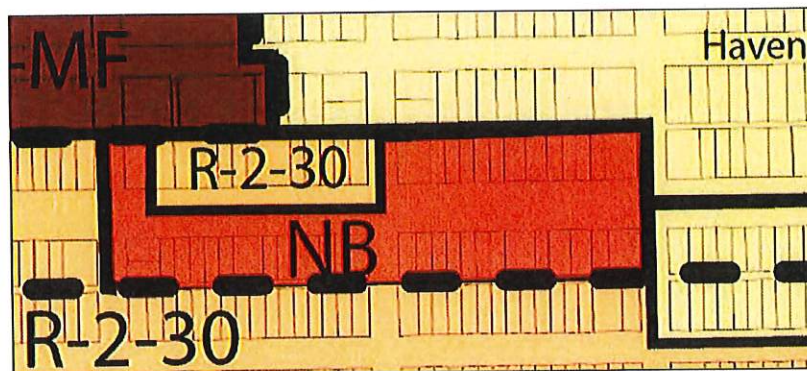
Exhibit B  
Inclusionary Housing Option in Business Zone Districts

Neighborhood Business Zone –

Battersea Road



4<sup>th</sup> & West Avenue



21<sup>st</sup>/22<sup>nd</sup> & Asbury Avenue

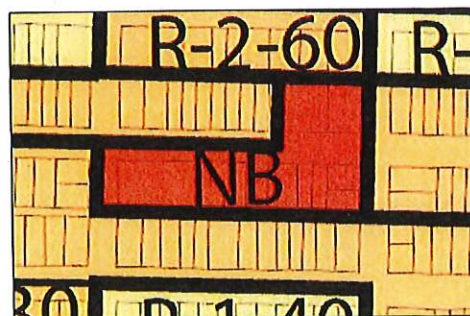
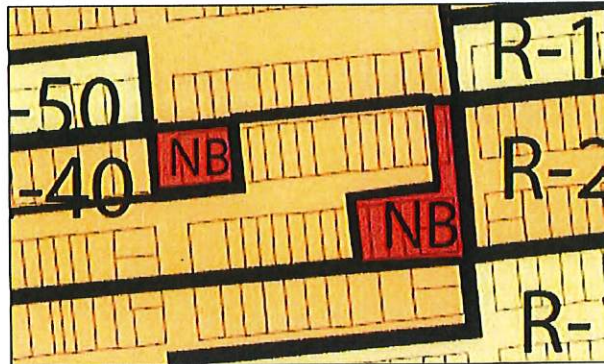
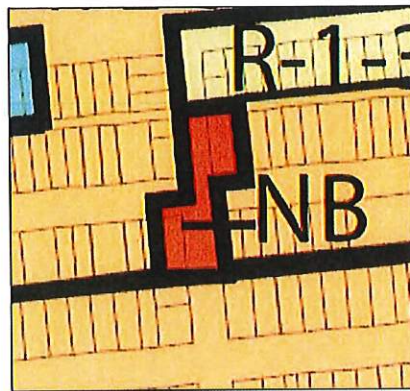


Exhibit B  
Inclusionary Housing Option in Business Zone Districts

27<sup>th</sup> /28<sup>th</sup> & Asbury Avenue



33<sup>rd</sup> & Asbury Avenue



33<sup>rd</sup> & Simpson Avenue

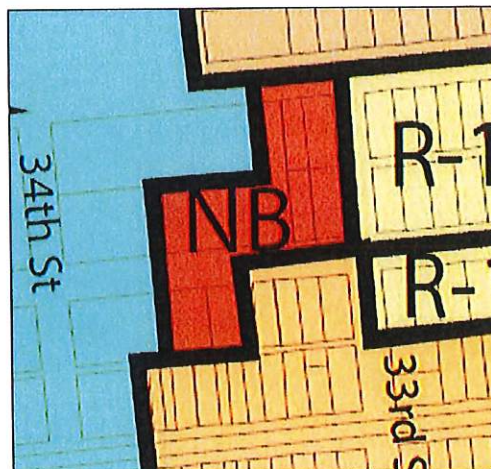
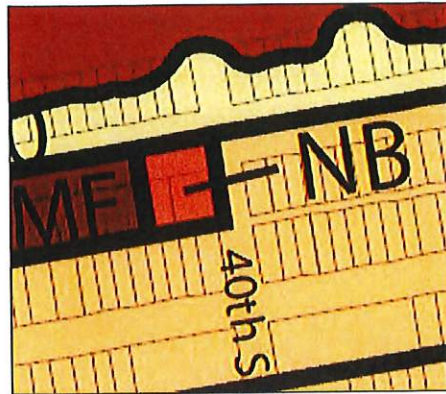




Exhibit B  
Inclusionary Housing Option in Business Zone Districts

40<sup>th</sup> & West Avenue



55<sup>th</sup> Street

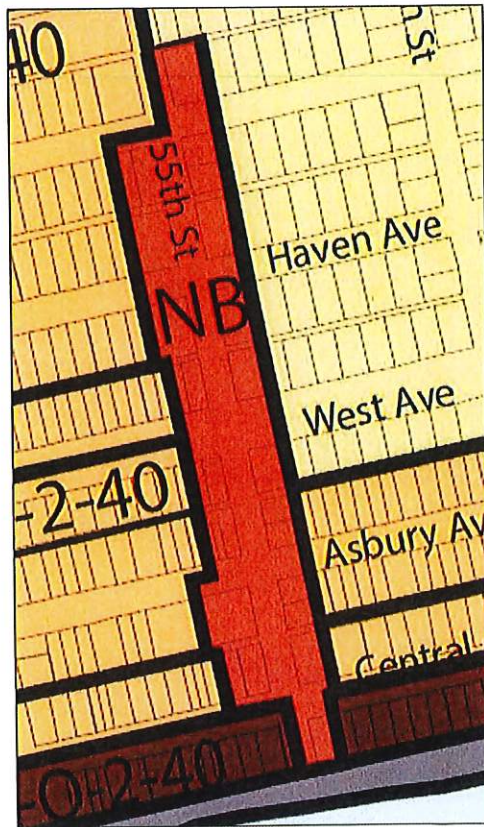


Exhibit B  
Inclusionary Housing Option in Business Zone Districts

34<sup>th</sup> Street Gateway Zone –

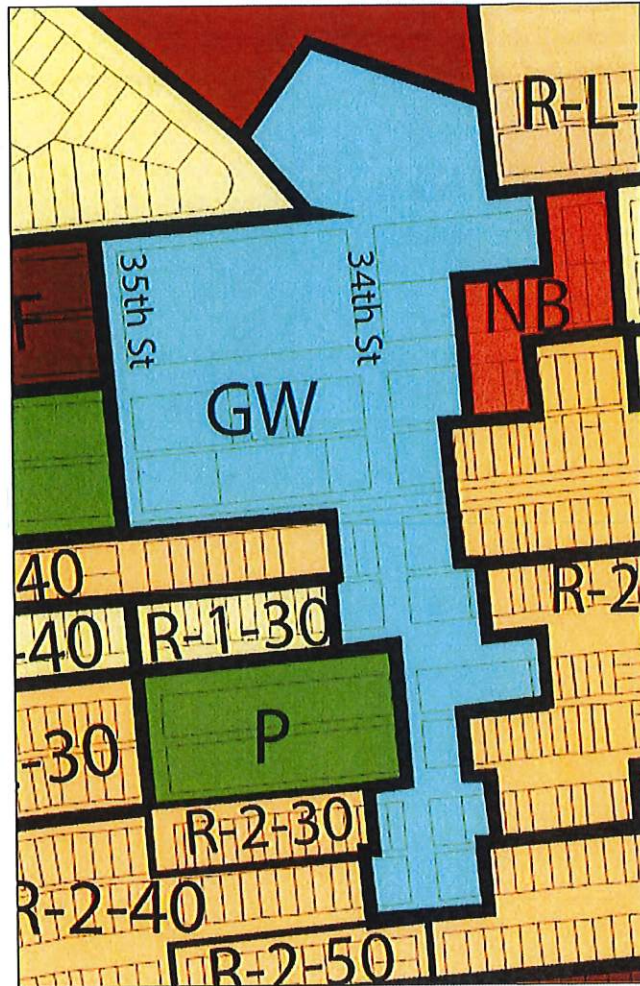
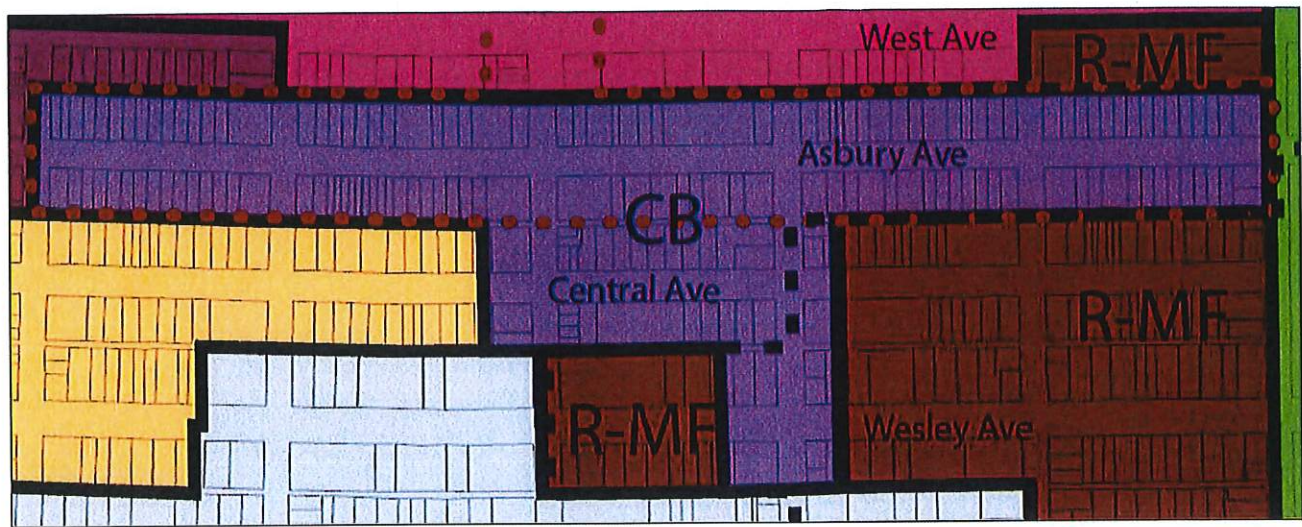




Exhibit B  
Inclusionary Housing Option in Business Zone Districts

Central Business Zone –



Central Business-1 Zone –

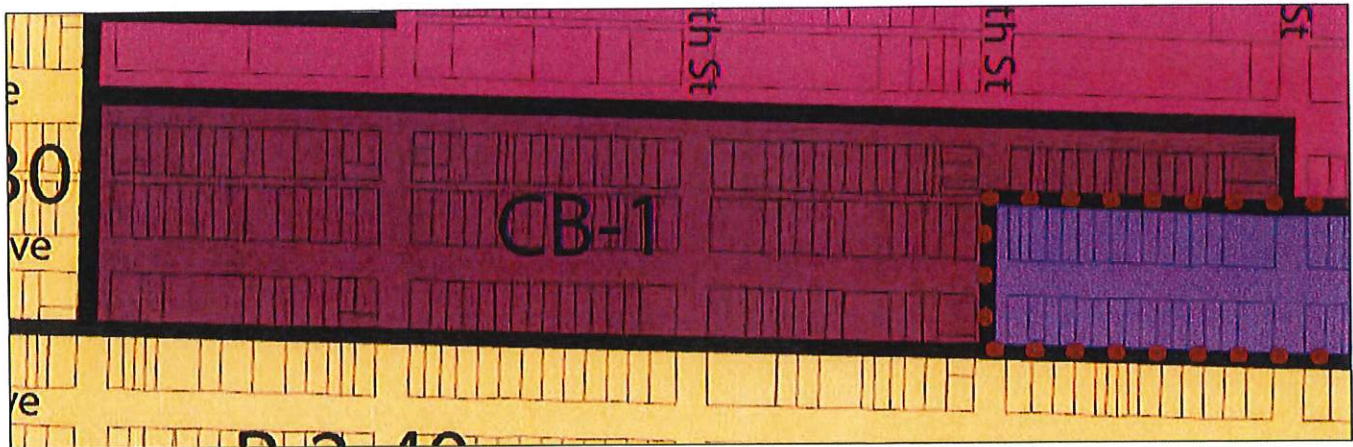
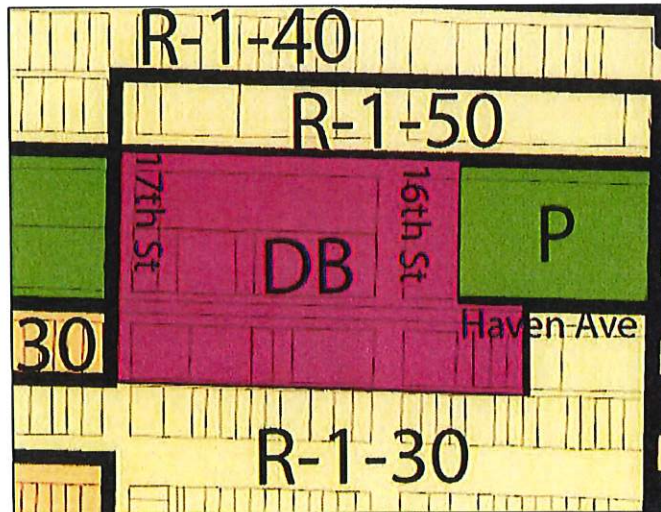
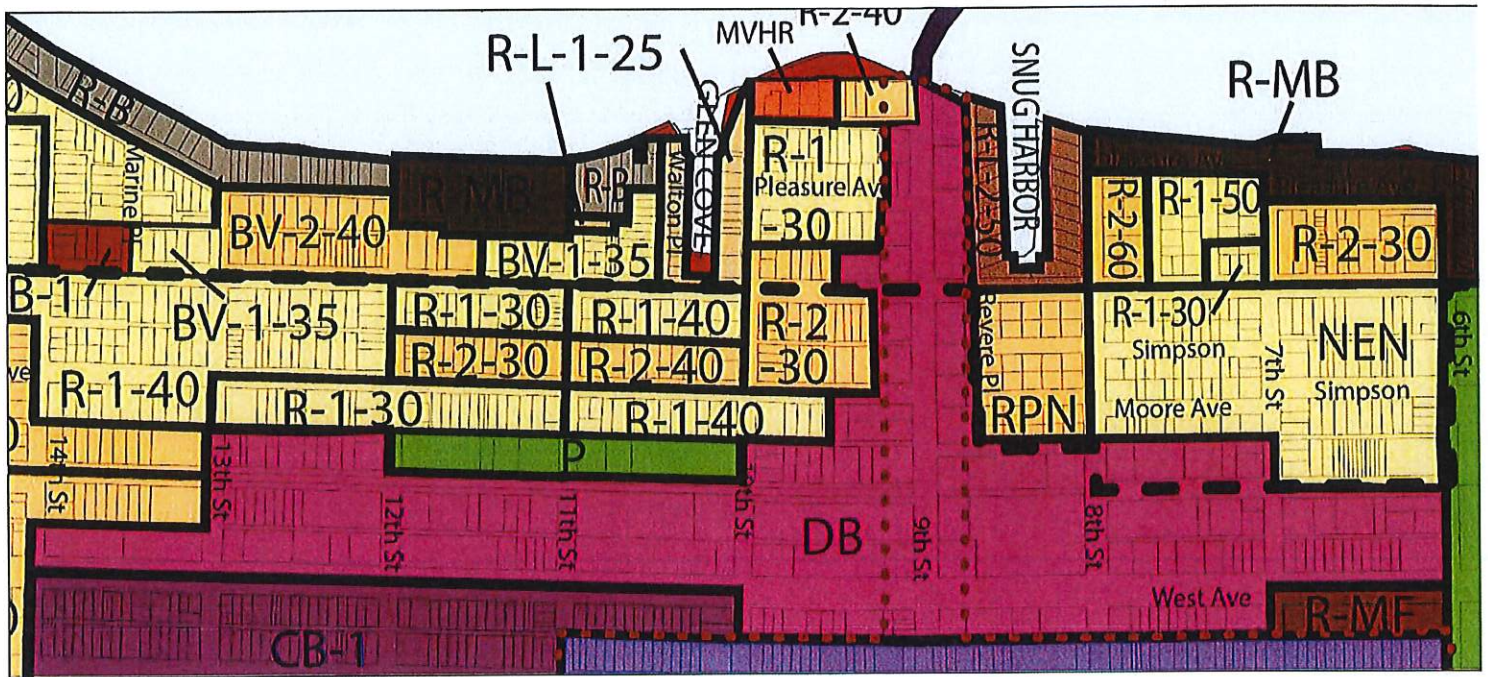




Exhibit B  
Inclusionary Housing Option in Business Zone Districts

Drive-in Business Zone –



**ORDINANCE NO. 18-**

**AN ORDINANCE AMENDING AND SUPPLEMENTING  
CHAPTER XXV, ZONING AND LAND DEVELOPMENT OF  
THE REVISED ORDINANCES OF THE CITY OF OCEAN CITY  
Inclusionary R-2 Zone Districts Assemblage Incentive Overlay Zone**

BE IT ORDAINED by the Mayor and Council of the City of Ocean City, County of Cape May, State of New Jersey, as follows.

**Section 1.**

**25-204.2 Non-Discrete Residential Two Family Zones.**

R-2-30, R-2-40, R-2-50, R-2-60. (Ord. #00-05, §3; Ord. #00-06, §4; Ord. #02-19)

**25-204.2.1 Purpose.**

The Non-Discrete Residential Two Family Zones established in subsection 25-201.1.1 of this Ordinance are intended to provide and maintain residential areas for detached two (2) family dwellings in those areas in Ocean City where this type of housing has either traditionally developed or is currently the predominant land use type. (Ord. #02-19) In an effort to increase housing diversity and provide realistic opportunities for affordable housing, development of two-family and multi-family at increased densities will be permitted in accord with Section 25-204.26.

**25-204.2.2 Permitted Uses.**

- a. One (1) family dwellings;
- b. Two (2) family dwellings;
- c. Two (2) family dwellings subject to Inclusionary Incentive Overlay Zone pursuant to §25-204.26;
- d. Multi-family dwellings subject to Inclusionary Incentive Overlay Zone pursuant to §25-204.26;
- e. Essential services.

(Ord. #02-19)



**25-204.2.3 Conditional Uses. [NO CHANGE TO THIS SECTION]**

**25-204.2.4 Permitted Accessory Uses. [NO CHANGE TO THIS SECTION]**

**25-204.2.5 Bulk Requirements. [NO CHANGE TO THIS SECTION]**

**25-204.2.6 Rear Yard. [NO CHANGE TO THIS SECTION]**

## **NEW SECTION**

**25-204.26 Inclusionary Incentive Overlay Zone**

**25-204.26.1 Purpose.**

The Inclusionary Incentive Overlay Zone is intended to increase the diversity of housing and provide realistic opportunities for affordable housing as defined at NJAC 5:97-1.4. Development of two-family dwellings and multi-family dwellings in accord with this ordinance are required to set aside a percentage of the total dwelling units as affordable units. Incentives to utilize the Inclusionary Incentive Overlay Zone include increased density and building height.

**25-204.26.2 Bulk Requirements.**

### **Inclusionary Incentive Overlay Zone—Schedule of District Regulations**

Minimum Tract Size	Minimum Yard Requirements			Min. Lot Depth (Feet) (4)	Maximum		Maximum Density (dwelling units per acre)	Maximum Building Coverage (percent)	Maximum Impervious Coverage (percent)
	(Feet)				Building Height				
	Front	Rear	Side		Flat	Habitable Stories			
	(1)	(2)	(3)		Pitched Roof				
25% of a Block	Schedule B	20% of lot depth	Schedule C	100	29 FT 34 FT	3	30	60	90

#### **NOTES TO SCHEDULE –**

- (1) In all zone districts, the minimum front yard setback shall be as indicated on Schedule B, "Schedule of Front Yard Setback Depths by Street." Where development is proposed on lots adjacent to a street not listed on Schedule B, the front yard shall be the average setback of the adjacent buildings on the entire block, as determined from a certified survey provided by the applicant/owner.
- (2) For lagoon-front, bay-front and oceanfront lots, the front yard shall be the street side and the rear yard shall be the waterside of the lot.
- (3) On corner lots, the minimum side yard setback shall be provided for the interior side yard and the larger setback shall be provided for the side yard adjoining the street.

- (4) The minimum required lot depth indicated shall be provided, except that lots existing at the time of adoption of this Ordinance with less than the required depth shall be deemed to be conforming for purposes of lot depth.

SCHEDULE B—Schedule of Front Yard Setback Depths by Street (Section 25-209.2)

SCHEDULE C—Schedule of Side Yard Setbacks (Section 25-209.3)

**\*Editor's Note:** Schedules B and C referred to herein may be found in Section 25-209.

### **25-204.26.3 Maximum Affordable Housing Set-aside**

- a. Sale Units - The maximum affordable housing set-aside applied to sale units is twenty (20) percent of the total number of units in the development.
- b. Rental Units - The maximum affordable housing set-aside applied to rental units is fifteen (15) percent of the total number of units in the development.

### **25-204.26.4 Construction of Affordable Housing Units**

Developers shall construct the affordable units required by this ordinance as follows:

- a. On the subject site;
- b. Elsewhere in the municipality as approved by the Planning Board or Zoning Board of Adjustment;
- c. Payment in lieu of construction providing the whole or fractional affordable units required, subject to the following:
  - (1) Payments in lieu of constructing affordable units may represent fractional affordable units. The affordable housing requirement shall not be rounded.
  - (2) The zoning ordinance may include specific criteria to be met for a development to be eligible to provide a payment in lieu. Examples of such criteria include, but are not limited to, minimum development size thresholds or environmental or site configuration concerns. Once criteria are established by ordinance, exercising the option shall be at the developer's discretion.
  - (3) The amount of payments in lieu of constructing affordable units on site shall be \$182,859.
  - (4) Payments in lieu of constructing affordable units shall be deposited into an affordable housing trust fund pursuant to N.J.A.C. 5:97-8.4 and subject to the provisions thereof.
  - (5) Payments in lieu of constructing affordable housing shall not be permitted where affordable housing is not required. Zoning that does not require an affordable housing set-aside or permit a corresponding payment in lieu may be subject to a development fee ordinance pursuant to N.J.A.C. 5:97-8.3.
- d. Affordable housing units shall be built in accordance with the following schedule:

Percentage of Market-rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
25	0
25 + 1 unit	10
50	50
75	75
90	10

- e. To the extent feasible, developers shall fully integrate the low- and moderate-income units with the market units.
- f. Affordable units shall utilize the same heating source as market-rate units within the inclusionary development and have access to all community amenities available to market-rate units and subsidized in whole by association fees.
- g. The first floor of all townhouse dwelling units and all other multistory dwelling units comply with N.J.A.C. 5:97-3.14.
- h. The affordable units shall comply with N.J.A.C. 5:97-9 and UHAC.

## **Section 2.**

This Ordinance shall take effect in the time and manner prescribed by law.

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Jay A. Gillian, Mayor

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Peter V. Madden, Council President

The above Ordinance was passed by the Council of Ocean City, New Jersey, at a meeting of said Council held on the \_\_\_ day of \_\_\_\_\_, **2018**, and was taken up for a second reading and final passage at a meeting of said Council held on the \_\_\_ day of \_\_\_\_\_, 2018, in Council Chambers, City Hall, Ocean City, New Jersey, at seven o'clock in the evening.

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Melissa G. Rasner, City Clerk

**Summary -**

Adopt an inclusionary overlay zone applicable to all R-2 zone districts, triggered by an assemblage of at least 25% of the land area of a block that is designated R-2 zone district. Increase the density from the current approximately 20 units/acre in duplexes (12 to 28 units/acre depending in lot location on the block) to 30 units/acre. Modify bulk standards; increase the maximum building height to three habitable stories. Expand permitted uses to include multifamily housing.

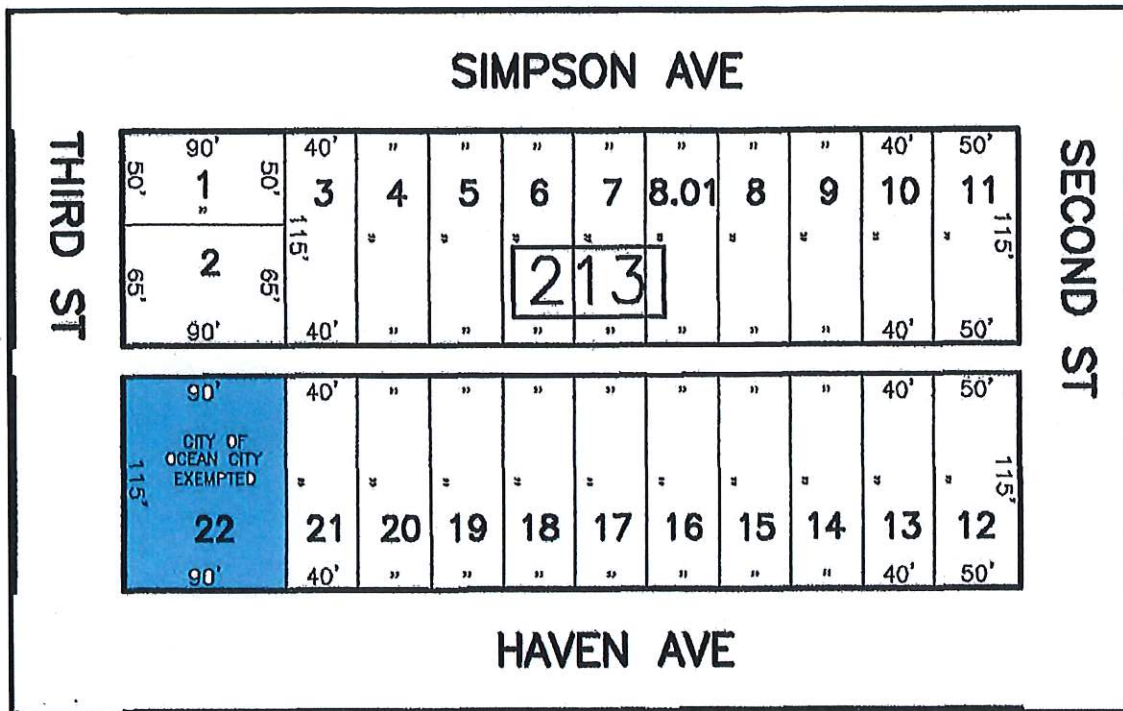
***Implementation of Proposal #2***

Implementation of Proposal #2 as described above will apply to all Non-discrete Residential Two-family Zones and will require revisions to the City Code as indicated below.

July 18, 2018

Exhibit D  
Ocean City Properties

Block 213, Lot 22 – 240-44 Simpson Avenue



Block 214, Lot 11 – 224 Simpson Avenue

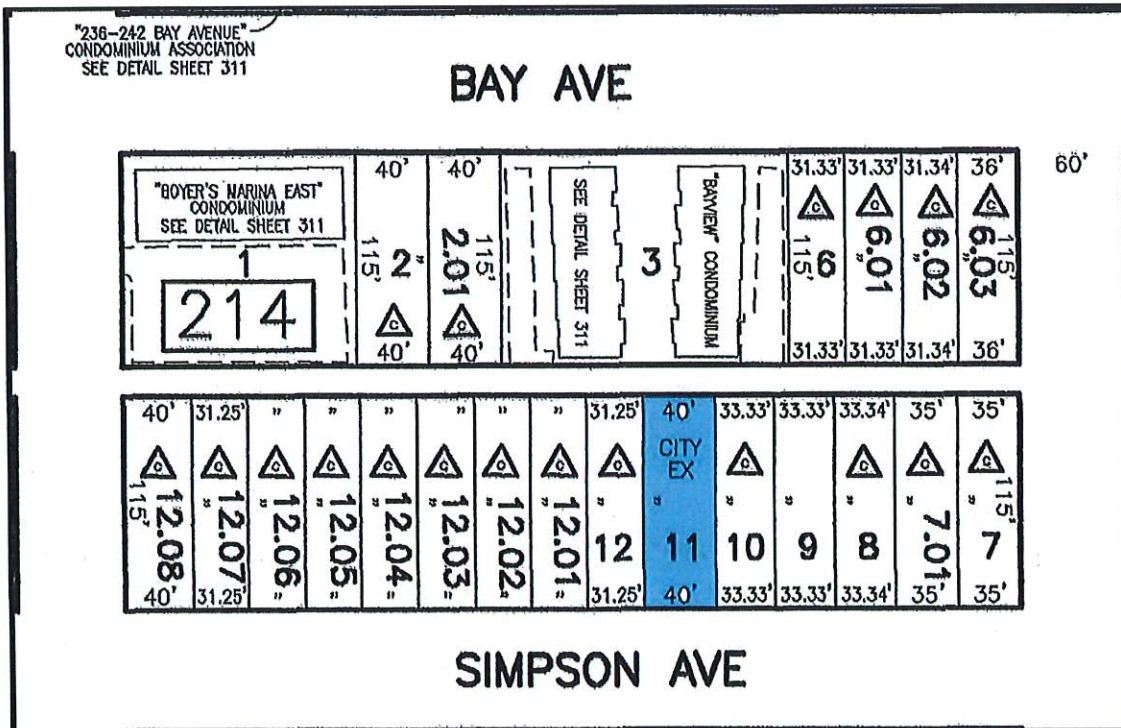
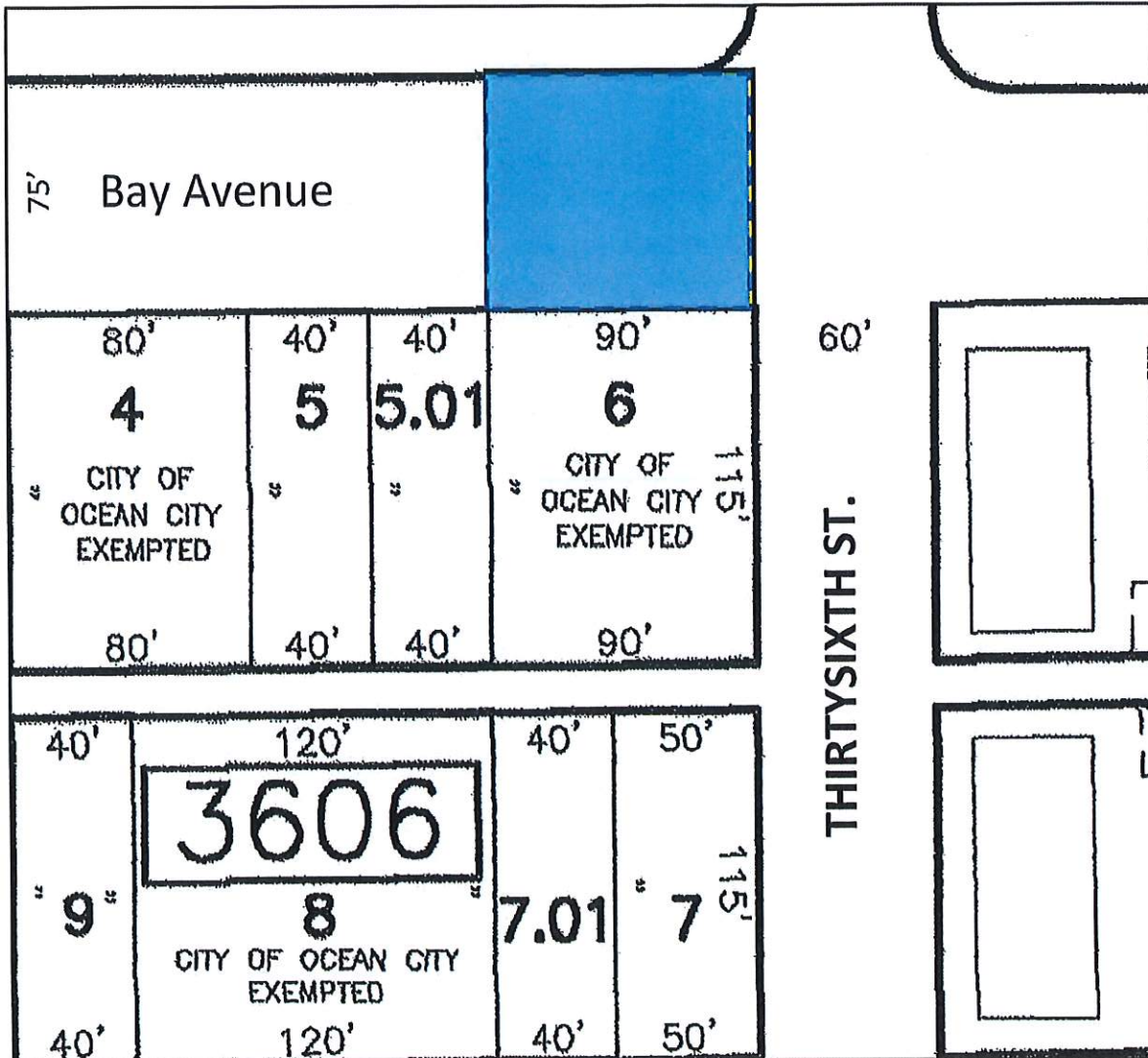


Exhibit D  
Ocean City Properties

Street End - 36<sup>th</sup> Street/Bay Avenue



ALL PROPERTIES IDENTIFIED IN THIS EXHIBIT ARE OWNED BY THE  
CITY OF OCEAN CITY.



Exhibit E  
Ocean City Housing Authority Properties

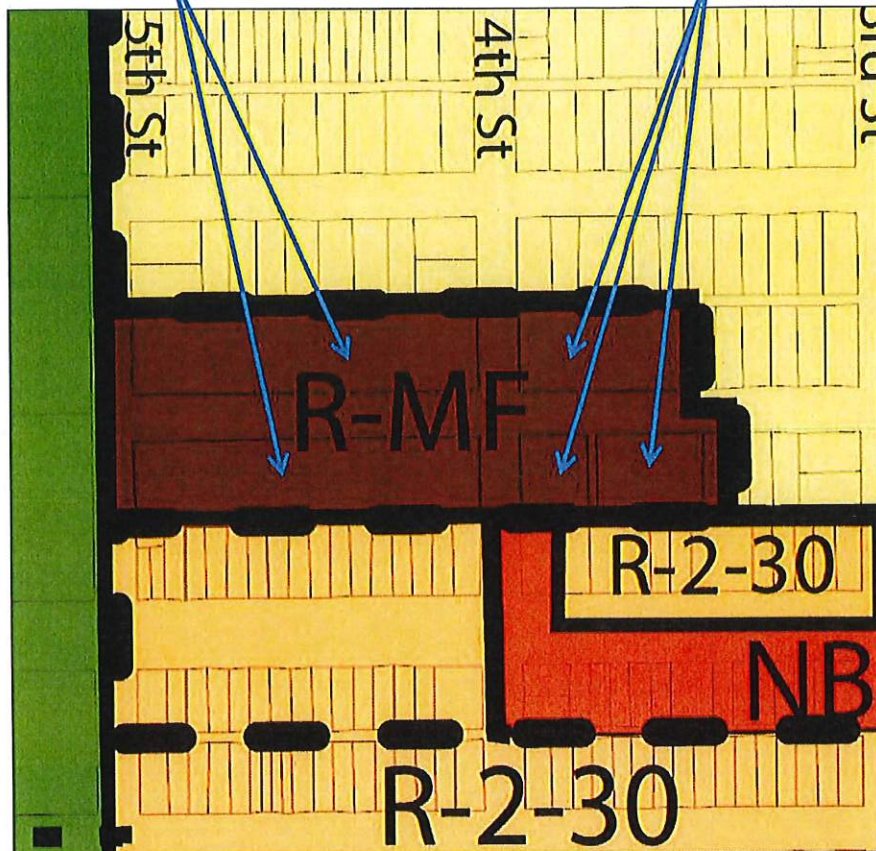
Peck's Beach Village

Peck's Beach Village (South)

Peck's Beach Village (North)

*(Block 409, Lot 1, Block 410, Lot 12)*

*(Block 309, Lots 1 & 2, Block 310, Lot 14)*



Bayview Manor (Block 605, Lot 1)



# **EXHIBIT F : 2017 INCOME LIMITS**

## **2017 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE**

Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - August 2017

Income limits not officially adopted by the State of New Jersey. Contact your municipality to see if applicable in your jurisdiction. Additional information about AHPNJ income limits is posted on AHPNJ.org

		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8+ Person	Max Increase Rents** Sdies***	Regional Asset Limit****
Region 1 Bergen, Hudson, Passaic and Sussex	Median	\$60,271	\$64,576	\$68,882	\$77,492	\$86,102	\$89,546	\$92,990	\$99,878	\$106,766	\$113,655		
	Moderate	\$48,217	\$51,661	\$55,105	\$61,993	\$68,882	\$74,637	\$79,903	\$85,413	\$90,924	\$96,435	1.7%	\$166,499
	Low	\$30,136	\$32,288	\$34,441	\$38,746	\$43,051	\$44,773	\$46,495	\$49,939	\$53,383	\$56,827	1.99%	
Region 2 Essex, Morris, Union and Warren	Median	\$18,081	\$19,373	\$20,664	\$23,248	\$25,831	\$26,864	\$27,897	\$29,963	\$32,030	\$34,096		
	Moderate	\$55,953	\$70,663	\$75,374	\$84,796	\$94,218	\$97,987	\$101,755	\$109,293	\$116,830	\$124,368	1.7%	\$180,756
	Low	\$32,976	\$35,332	\$37,687	\$42,398	\$47,109	\$48,998	\$50,878	\$54,646	\$58,415	\$62,184	3.25%	
Region 3 Hunterdon, Middlesex and Somerset	Median	\$73,780	\$79,050	\$84,320	\$94,860	\$105,400	\$109,616	\$113,832	\$122,264	\$130,696	\$139,128		
	Moderate	\$59,024	\$63,240	\$67,456	\$75,888	\$84,320	\$87,693	\$91,066	\$97,811	\$104,557	\$111,302	1.7%	\$200,698
	Low	\$36,890	\$39,525	\$42,160	\$47,430	\$52,700	\$54,808	\$56,916	\$61,132	\$65,348	\$69,564	0.38%	
Region 4 Mercer, Monmouth and Ocean	Median	\$22,134	\$23,715	\$25,296	\$28,458	\$31,620	\$32,885	\$34,150	\$36,679	\$39,209	\$41,738		
	Moderate	\$66,022	\$70,738	\$75,454	\$84,885	\$94,317	\$98,090	\$101,862	\$109,408	\$116,953	\$124,498	1.7%	\$177,413
	Low	\$52,817	\$56,590	\$60,363	\$67,908	\$75,454	\$78,472	\$81,490	\$87,526	\$93,562	\$99,599	1.53%	
Region 5 Burlington, Camden and Gloucester	Median	\$33,011	\$35,369	\$37,727	\$42,443	\$47,158	\$49,045	\$50,931	\$54,704	\$58,476	\$62,249		
	Moderate	\$19,807	\$21,221	\$22,636	\$25,466	\$28,295	\$29,427	\$30,559	\$32,822	\$35,086	\$37,349	1.7%	\$136,680
	Low	\$58,240	\$62,400	\$66,560	\$74,890	\$83,220	\$86,528	\$89,856	\$96,512	\$103,168	\$109,824	2.09%	
Region 6 Atlantic, Cape May, Cumberland, and Salem	Median	\$46,592	\$49,920	\$53,248	\$59,904	\$66,560	\$69,222	\$71,885	\$77,210	\$82,534	\$87,859		
	Moderate	\$28,120	\$31,200	\$33,280	\$37,440	\$41,600	\$44,264	\$46,928	\$48,256	\$51,584	\$54,912	1.7%	\$154,194
	Low	\$17,472	\$18,720	\$19,968	\$22,464	\$24,960	\$25,958	\$26,957	\$28,954	\$30,950	\$32,947	2.09%	
Region 6 Atlantic, Cape May, Cumberland, and Salem	Median	\$51,085	\$54,734	\$58,383	\$65,681	\$72,979	\$75,898	\$78,817	\$84,655	\$90,494	\$96,332		
	Moderate	\$40,868	\$43,787	\$46,706	\$52,545	\$58,383	\$60,718	\$63,054	\$67,724	\$72,395	\$77,066	1.7%	\$136,680
	Low	\$25,543	\$27,367	\$29,192	\$32,840	\$36,488	\$37,949	\$39,409	\$43,328	\$45,247	\$48,166	0.00%	
Region 6 Atlantic, Cape May, Cumberland, and Salem	Median	\$15,326	\$16,420	\$17,515	\$19,704	\$21,894	\$22,769	\$23,645	\$25,397	\$27,148	\$28,900		
	Moderate	\$58,240	\$62,400	\$66,560	\$74,890	\$83,220	\$86,528	\$89,856	\$96,512	\$103,168	\$109,824	1.7%	\$136,680
	Low	\$17,472	\$18,720	\$19,968	\$22,464	\$24,960	\$25,958	\$26,957	\$28,954	\$30,950	\$32,947	2.09%	

Moderate income is between 80 and 50 percent of the median income. Low income is 50 percent or less of median income. Very low income is 30 percent or less of median income.

\* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

\*\* This column is used for calculating the pricing for rent increases for units as per N.J.A.C. 5:97-9.3. The increase for 2015 was 2.3%, the increase for 2016 was 1.1% and the increase for 2017 is 1.7% (Consumer price index for All Urban Consumers (CPI-U)). Regions by expenditure category and commodity and service group). Landlords who did not increase rents in 2015 or 2016 may increase rent by up to the applicable combined percentage from their last rental increase for that unit. In no case can rent for any particular apartment be increased more than one time per year.

\*\*\* This column is used for calculating the pricing for resale increases for units as per N.J.A.C. 5:97-9.3. As per 5:97-9.3(b), 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.

Low income tax credit developments may increase based on the low income tax credit regulations.

\*\*\*\* The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b).

Note: Since the Regional Income Limits for Region 6 in 2016 were higher than the 2017 calculations, the 2016 income limits will remain in force for 2017. See N.J.A.C. 5:97-9.2(c).