

ORDINANCE NO. 18-22

AN ORDINANCE ESTABLISHING RULES, REGULATIONS AND STANDARDS GOVERNING THE ZONING OF LAND WITH THE CITY OF OCEAN CITY, COUNTY OF CAPE MAY, PURSUANT TO THE AUTHORITY SET FORTH AS CHAPTER 55 OF TITLE 40 OF THE REVISED STATUTES AND AMENDMENTS AND SUPPLEMENTS THERETO, SETTING FORTH A DEVELOPMENT FEE TO BE APPLIED BY THE PLANNING BOARD, ZONING BOARD AND THE GOVERNING BODY IN THE DEVELOPMENT OF LAND

BE IT ORDAINED by the Council of the City of Ocean City, County of Cape May and State of New Jersey, that Article 1900 of the Ocean City Zoning and Land Development Ordinance is hereby deleted, replaced and superseded by the following:

SECTION 1

25-1900 AFFORDABLE HOUSING DEVELOPMENT FEES.

Prior Ordinance history includes portions of Ordinance No. 99-14, -6-30 and 11-28.

25-1900.1 Title.

This ordinance shall be known and may be cited as:

DEVELOPMENT FEE ORDINANCE OF CITY OF OCEAN CITY

25-1900.2 Purpose.

- a. In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- b. Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- c. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

25-1900.3 Basic Requirements.

- a. This ordinance shall not be effective until approved by the Court.
- b. The City of Ocean City shall not spend development fees until the Court has approved a plan for spending such fees.

25-1900.4 Definitions.

The following terms, as used in this ordinance, shall have the following meanings:

Affordable Housing Development means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

COAH or the *Council* means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

Development Fee means money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:97-8.3*.

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

Equalized Assessed Value means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

Green Building Strategies means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community service.

25-1900.5 Residential Development Fees.

a. Imposed Fees.

1. Within the City of Ocean City residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one- and one-half percent (1.5%) of the equalized assessed value for residential development provided no increased density is permitted.
2. When an increase in residential density pursuant to *N.J.S.A. 40:55D-70d(5)* (known as a "d" variance) has been permitted, developers is required to pay a development fee of six percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

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

b. Eligible Exactions, Ineligible Exactions and Exemptions for Residential Development.

1. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, developments where the developer has made a payment in lieu of on-site construction of affordable units, nonprofit institutions and other tax-exempt entities shall be exempt from development fees.
2. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall

be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.

3. Development fees shall be imposed and collected when an existing structure, other than a detached single-family dwelling, is constructed, demolished and replaced, or expanded (if the expansion is not otherwise exempt from the development fee requirement). The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
4. Existing detached single-family dwellings that are reconstructed, renovated or expanded shall be exempt from development fees.
5. Developers of existing lots that result in the construction of a detached single-family home shall be exempt from paying a development fee provided the single-family home is not the result of a subdivision. If the single-family home is the result of a subdivision, a development fee shall apply to all single-family homes which are a net increase over the number of homes on the site prior to the subdivision.
6. For the demolition of an existing residential structure with a replacement of two or more residential structures, the development fee shall be calculated by subtracting the equalized assessed value at the time of the structure demolition from the equalized assessed value of the new residential replacements.
7. Owner occupied residential structures demolished and replaced as a result of a fire, flood or natural disaster shall be exempt from paying a development fee.

25-1900.6 Non-Residential Development Fees.

a. Imposed Fees.

1. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
2. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

b. Eligible Exactions, Ineligible Exactions and Exemptions for Non-Residential Development.

1. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
2. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.

3. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
4. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
5. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the City of Ocean City as a lien against the real property of the owner.

25-1900.7 Collection Procedures.

- a. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- b. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The Developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- c. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- e. The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- f. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- g. Should the City of Ocean City fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).
- h. The developer shall pay 100 percent of the calculated development fee amount prior to the municipal issuance of a final certificate of occupancy for the subject property.
- i. *Appeal of Development Fees.*

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

25-1900.8 Affordable Housing Trust Fund.

- a. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- b. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 1. Payments in lieu of on-site construction of affordable units;
 2. Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
 3. Rental income from municipally operated units;
 4. Repayments from affordable housing program loans;
 5. Recapture funds;
 6. Proceeds from the sale of affordable units; and
 7. Any other funds collected in connection with the City of Ocean City's affordable housing program.
- c. Within seven days from the opening of the trust fund account, the City of Ocean City provided COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
- d. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

25-1900.9 Use of Funds.

- a. The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the housing trust fund may be used for any activity approved by the Court to address the City of Ocean City's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and

related costs, accessory apartments, market to affordable, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted by the Court and specified in the approved spending plan.

- b. Funds shall not be expended to reimburse the City of Ocean City for past housing activities.
- c. At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
 1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner's association or condominium fees and special assessments, and assistance with emergency repairs.
 2. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
 3. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- d. The City of Ocean City may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- e. No more than 20 percent of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the Court's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

25-1900.10 Monitoring.

The City of Ocean City shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, the 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 Affordable Housing Trust Fund activity including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, payments in lieu of constructing affordable units on

site(if permitted by Ordinance or by an Agreement with the City), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with Ocean City's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

25-1900.11 Ongoing Collection of Fees.

The ability of the City of Ocean City to impose, collect and expend development fees shall expire with its Judgement of Compliance unless the City of Ocean City has filed an adopted Housing Element and Fair Share Plan with the Court or a designated State administrative agency, has petitioned for a Judgement of Compliance from the Court and has received approval of its development fee ordinance. If the City of Ocean City fails to renew its ability to impose and collect development fees prior to the expiration of the Judgement of Compliance, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (N.J.S.A. 52:27D-320). The City of Ocean City shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgement of Compliance, nor shall the City of Ocean City retroactively impose a development fee on such a development. The City of Ocean City shall not expend development fees after the expiration of its Judgement of Compliance.

SECTION 2

Severability.

If any portion of this Ordinance is declared to be invalid by a Court of competent jurisdiction, it shall not affect the remaining portions of the Ordinance which shall remain in full force and effect.

SECTION 3

Repealer.

All Ordinances or portions thereof inconsistent with this Ordinance are repealed to the extent of such inconsistency.

SECTION 4

Effective date.

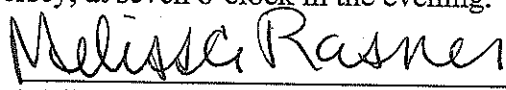
This Ordinance shall take effect in the time and manner prescribed by law.



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 29th day of November, 2018, and was taken up for a second reading and final passage at a meeting of said Council held on the 13th day of December, 2018, in Council Chambers at City Hall, Ocean City, New Jersey, at seven o'clock in the evening.



Melissa Rasner, City Clerk

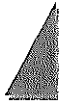
Summary -

The adoption of this ordinance is part of Ocean City's Affordable Housing strategy.

This ordinance replaces and updates existing Article 1900, which is the City's Development Fee Ordinance, and which requires fees to be paid into the City's affordable housing trust fund by developers of certain new constructions projects.

The major substantive changes to the existing ordinance are as follow:

- References the Council on Affordable Housing (COAH) are replaced with the Court in recognition of the Court's role in providing oversight over the City's use of fees in its affordable housing trust fund.
- The Residential Development Fee is increased from 1% to 1.5%.
- Owner-occupied residential structures demolished and replaced as a result of fire, flood or other natural disaster are exempted from paying a development fee.
- The monitoring requirements are revised to reflect the monitoring to which the City agreed in the Settlement Agreement between the City and Fair Share Housing Center, approved by City Council on July 12, 2018.



CITY OF OCEAN CITY
ORDINANCE NO. 18-22
Master Plan Consistency Report

Introduction.

Ordinance 18-22 "An Ordinance Amending and Supplementing Chapter XXV, Zoning and Land Development of the Revised General Ordinances of the City of Ocean City, New Jersey (Development Fee)" will be introduced and adopted on first reading by City Council on November 29, 2018, and will be advertised according to law and scheduled for second reading and public hearing on December 13, 2018.

The "Municipal Land Use Law" provides the Planning Board with thirty-five (35) days from the referral date to prepare, review, adopt and transmit their consistency report regarding Ordinance 18-22 to City Council. NJSA 40:55D-26 describes the Planning Board's responsibility regarding the master plan consistency review as follows:

"... the planning board shall make and transmit to the governing body, within 35 days after referral, a report including identification of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the master plan and recommendations concerning those inconsistencies and any other matters as the board deems appropriate."

The statute requires that every zoning ordinance must "either be substantially consistent with the land use plan element and the housing plan element of the master plan, or designed to effectuate such plan element." NJSA 40:55D-62a.

While formerly only zoning ordinances and amendments thereto were required to be submitted to the planning board, it is now clear from the wording in NJSA 40:55D-26 that all "development regulations" must be referred to the planning board for comment and report. The statute requires that every zoning ordinance must "either be substantially consistent with the land use plan and housing plan of the master plan, or designed to effectuate such plan elements." The "Master Plan" referred to herein is the City of Ocean City Master Plan adopted February 3, 1988, and as subsequently amended.

Ordinance Summary.

Ordinance 18-22 is part of Ocean City's Affordable Housing strategy and is required by the Settlement Agreement¹, and is being adopted expressly for the purpose of assisting the City of Ocean City in meeting its affordable housing obligation. This Ordinance replaces the existing development fee ordinance; it includes a residential fee of one-and-one-half percent (1.5%) of equalized assessed value, and recognizes the City's Judgement of Compliance from the Court. Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing low- and moderate-income housing.

Analysis and Conclusion.

As noted above the Planning Board's responsibility in terms of the master plan consistency review is to evaluate the ordinance with regard to the land use plan and housing plan; identify any provisions in the ordinance which are inconsistent with the Master Plan; and make recommendations concerning those inconsistencies and any other matters as the Board deems appropriate.

In defining "substantial consistency" the Supreme Court in *Manalapan Realty v. Township Committee* made it clear that some inconsistency is permitted "provided it does not substantially or materially undermine or distort the basic provisions and objectives of the Master Plan." The "Municipal Land Use Law" does not define the term *inconsistent*.

The following Master Plan Goals and Objectives are relevant to Ordinance 18-22:

- *To support the upgrading of substandard housing, increase the diversity of housing choices, housing affordability and year-round population; and maintain and enhance existing residential areas as the foundation of a desirable and vibrant family resort community.*
- *To encourage municipal actions which will guide the long range appropriate use and development of lands within the City of Ocean City in a manner which will promote the public health, safety, and general welfare of present and future residents.*
- *To encourage coordination of the numerous regulations and activities which influence land development with a goal of producing efficient uses of land with appropriate development types and scale.*
- *To promote the establishment of appropriate population densities in locations that will contribute to the well-being of persons, neighborhoods and preservation of the environment.*

¹ Settlement Agreement between the City and the Fair Share Housing Center, July 18, 2018

Ordinance 18-22
Master Plan Consistency Report

Having considered Ordinance 18-22, the Municipal Land Use Law and the Master Plan, it is my professional opinion that Ordinance 18-22 is consistent with the City Master Plan since it is designed to effectuate the Housing Plan element and will advance the Master Plan Goals and Objectives cited herein.

Respectively submitted,



Randall E. Scheule, PP/AICP

New Jersey Professional Planner License No. LI003666

November 28, 2018

ORDINANCE NO. 18-22

AN ORDINANCE ESTABLISHING RULES, REGULATIONS AND STANDARDS GOVERNING THE ZONING OF LAND WITH THE CITY OF OCEAN CITY, COUNTY OF CAPE MAY, PURSUANT TO THE AUTHORITY SET FORTH AS CHAPTER 55 OF TITLE 40 OF THE REVISED STATUTES AND AMENDMENTS AND SUPPLEMENTS THERETO, SETTING FORTH A DEVELOPMENT FEE TO BE APPLIED BY THE PLANNING BOARD, ZONING BOARD AND THE GOVERNING BODY IN THE DEVELOPMENT OF LAND

BE IT ORDAINED by the Council of the City of Ocean City, County of Cape May and State of New Jersey, that Article 1900 of the Ocean City Zoning and Land Development Ordinance is hereby deleted, replaced and superseded by the following:

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- b. Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- c. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees,

codified at N.J.A.C. 5:97-8.

25-1900.3 Basic Requirements.

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COAH or the *Council* means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

Development Fee means money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:97-8.3*.

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

Equalized Assessed Value means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

Green Building Strategies means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community service.

25-1900.5 Residential Development Fees.

a. *Imposed Fees.*

1. Within the City of Ocean City residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one- and one-half percent (1.5%) of the equalized assessed value for residential development provided no increased density is permitted.

2. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers is required to pay a development fee of six percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

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

b. *Eligible Exactions, Ineligible Exactions and Exemptions for Residential Development.*

1. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, developments where the developer has made a payment in lieu of on-site construction of affordable units, nonprofit institutions and other tax-exempt entities shall be exempt from development fees.
2. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
3. Development fees shall be imposed and collected when an existing structure, other than a detached single-family dwelling, is constructed, demolished and replaced, or expanded (if the expansion is not otherwise exempt from the development fee requirement). The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
4. Existing detached single-family dwellings that are reconstructed, renovated or expanded shall be exempt from development fees.
5. Developers of existing lots that result in the construction of a detached single-family home shall be exempt from paying a development fee provided the single-family home is not the result of a subdivision. If the single-family home is the result of a subdivision, a development fee shall apply to all single-family homes which are a net increase over the number of homes on the site prior to the subdivision.

6. For the demolition of an existing residential structure with a replacement of two or more residential structures, the development fee shall be calculated by subtracting the equalized assessed value at the time of the structure demolition from the equalized assessed value of the new residential replacements.
7. Owner occupied residential structures demolished and replaced as a result of a fire, flood or natural disaster shall be exempt from paying a development fee.

25-1900.6 Non-Residential Development Fees.

a. *Imposed Fees.*

1. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
2. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

b. *Eligible Exactions, Ineligible Exactions and Exemptions for Non-Residential Development.*

1. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
2. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
3. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.

4. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
5. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the City of Ocean City as a lien against the real property of the owner.

25-1900.7 Collection Procedures.

- a. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- b. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The Developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- c. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- e. The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- f. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

- g. Should the City of Ocean City fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).
- h. The developer shall pay 100 percent of the calculated development fee amount prior to the municipal issuance of a final certificate of occupancy for the subject property.
- i. *Appeal of Development Fees.*
 - 1. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the City of Ocean City. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
 - 2. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the City of Ocean City. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

25-1900.8 Affordable Housing Trust Fund.

- a. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- b. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - 1. Payments in lieu of on-site construction of affordable units;
 - 2. Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - 3. Rental income from municipally operated units;

4. Repayments from affordable housing program loans;
 5. Recapture funds;
 6. Proceeds from the sale of affordable units; and
 7. Any other funds collected in connection with the City of Ocean City's affordable housing program.
- c. Within seven days from the opening of the trust fund account, the City of Ocean City provided COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
- d. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

25-1900.9 Use of Funds.

- a. The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the housing trust fund may be used for any activity approved by the Court to address the City of Ocean City's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs; accessory apartments, market to affordable, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted by the Court and specified in the approved spending plan.
- b. Funds shall not be expended to reimburse the City of Ocean City for past housing activities.
- c. At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
 1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with

homeowner's association or condominium fees and special assessments, and assistance with emergency repairs.

2. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
3. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- d. The City of Ocean City may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- e. No more than 20 percent of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the Court's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

25-1900.10 Monitoring.

The City of Ocean City shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, the 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 Affordable Housing Trust Fund activity including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, payments in lieu of constructing affordable units on site (if permitted by Ordinance or by an Agreement with the City), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with Ocean City's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

25-1900.11 Ongoing Collection of Fees.

The ability of the City of Ocean City to impose, collect and expend development fees shall expire with its Judgement of Compliance unless the City of Ocean City has filed an adopted Housing Element and Fair Share Plan with the Court or a designated State administrative agency, has petitioned for a Judgement of Compliance from the Court and has received approval of its development fee ordinance. If the City of Ocean City fails to renew its ability to impose and collect development fees prior to the expiration of the Judgement of Compliance, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (N.J.S.A. 52:27D-320). The City of Ocean City shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgement of Compliance, nor shall the City of Ocean City retroactively impose a development fee on such a development. The City of Ocean City shall not expend development fees after the expiration of its Judgement of Compliance.

SECTION 2

Severability.

If any portion of this Ordinance is declared to be invalid by a Court of competent jurisdiction, it shall not affect the remaining portions of the Ordinance which shall remain in full force and effect.

SECTION 3

Repealer.

All Ordinances or portions thereof inconsistent with this Ordinance are repealed to the extent of such inconsistency.

SECTION 4

Effective date.

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 7:00 o'clock in the evening.

Melissa G. Rasner, City Clerk

Summary -

The adoption of this ordinance is part of Ocean City's Affordable Housing strategy.

This ordinance replaces and updates existing Article 1900, which is the City's Development Fee Ordinance, and which requires fees to be paid into the City's affordable housing trust fund by developers of certain new constructions projects.

The major substantive changes to the existing ordinance are as follow:

- References the Council on Affordable Housing (COAH) are replaced with the Court in recognition of the Court's role in providing oversight over the City's use of fees in its affordable housing trust fund.
- The Residential Development Fee is increased from 1% to 1.5%.
- Owner-occupied residential structures demolished and replaced as a result of fire, flood or other natural disaster are exempted from paying a development fee.
- The monitoring requirements are revised to reflect the monitoring to which the City agreed in the Settlement Agreement between the City and Fair Share Housing Center, approved by City Council on July 12, 2018.

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Attorneys for the Ocean City Planning Board

OCEAN CITY PLANNING BOARD

RESOLUTION

1. As required by the Municipal Land Use Law, N.J.S. 40:55D-1 *et seq.*, City Council for the City of Ocean City through the City Clerk for the City of Ocean City has requested that the Ocean City Planning Board review Ordinance No. 18-22 for consistency with the Ocean City Master Plan.

2. On December 12, 2018, the Ocean City Planning Board reviewed Ordinance No. 18-22 for consistency with the Ocean City Master Plan and considered the Ordinance No. 18-22 Master Plan Consistency Report ["Ordinance No.18-22 Master Plan Consistency Report"] a true copy of which is attached hereto as Exhibit "A" and conducted a public hearing thereon. Randall E. Scheule, P.P. & A.I.C.P. ["Planner"] prepared the Ordinance No.18-22 Master Plan Consistency Report on November 28, 2018 and was present at the public hearing on December 12, 2018. The Planner presented the Ordinance No.18-22 Master Plan Consistency Report to the Ocean City Planning Board. All of the provisions of the Ordinance No.18-22 Master Plan Consistency Report are incorporated by this reference as if specifically set forth herein at

length. During his presentation, Mr. Scheule reviewed Ordinance No. 18-22 and the Ordinance No.18-22 Master Plan Consistency Report with the Ocean City Planning Board. Thereafter, Mr. Scheule addressed questions from Ocean City Planning Board members in respect of Ordinance No. 18-22 and the Ordinance No.18-22 Master Plan Consistency Report.

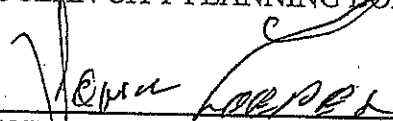
3. No member of the public testified or offered comments at the time of public hearing on the Ordinance No.18-22 Master Plan Consistency Report on December 12, 2018.

NOW, THEREFORE, BE IT RESOLVED by the Ocean City Planning Board on December 12, 2018 that the Ordinance No.18-22 Master Plan Consistency Report attached hereto as Exhibit "A" is **APPROVED AND ADOPTED** and, shall be **REFERRED** to the City Council for the City of Ocean City for legal action with the following comments and recommendations:

1. For all of the reasons delineated in the Ordinance No.18-22 Master Plan Consistency Report, Ordinance No. 18-22 is consistent with the Ocean City Master Plan.

This Resolution for approval, adoption, and referral was adopted on motion made by Ocean City Planning Board Member Bekier and seconded by Ocean City Planning Board Member Vanderschuere on December 12, 2018 ["Bekier Motion"]. The vote on the Bekier Motion was seven (7) in favor of and zero (0) against with Ocean City Planning Board Members Allegretto, Bekier, Jessel, Sheppard, Adams, Vanderschuere, and Loeper all voting in the affirmative.

OCEAN CITY PLANNING BOARD




JOHN LOEPER,
CHAIRPERSON

Dated: December 12, 2018

CERTIFICATION

I, JAIME M. FELKER, Secretary to the Ocean City Planning Board, do hereby certify that the foregoing Resolution was duly adopted at the meeting of the Ocean City Planning Board held on December 12, 2018 and memorialized herein pursuant to N.J.S. 40:55D-10 g. (2) on December 12, 2018.



JAIME M. FELKER,
Secretary, Ocean City Planning Board