

## Memorandum

ABS 046.10

Dated: July 7, 2007

To: Absecon Planning Board, Master Plan Committee

From: Robert L. Reid, AICP, PP, Board Planner

Re: **Proposed Affordable Housing Ordinance of Absecon City**

### Introduction

The New Jersey Council on Affordable Housing (COAH) adopted the third round methodology in November 2004. The new State housing plan ensures provisions for affordable housing for families and seniors and provides greater consistency with the State Plan, and creates incentives for very low-income and rental units.

The Third Round Methodology represents a comprehensive overhaul of the existing COAH system, and uses "growth share" to determine affordable housing obligations that are consistent with sound land use planning and smart growth. This growth share system reforms a system that has been criticized as cumbersome and rigid, and enables a town to determine its affordable housing obligation based on actual growth over time. The proposed COAH rules emphasize sound land use and long range municipal planning in keeping with New Jersey's smart growth agenda - affordable housing will not drive planning decisions; instead, sound planning decisions will drive the location and type of affordable housing to be provided.

Under the rules, one affordable unit must be provided for every eight market-rate residential units, and one affordable unit must be provided for every 25 jobs created, as measured by the square footage of new or expanded nonresidential construction.

The Third Round obligation is determined by the number of certificates issued since January 1, 2004 for both residential and non-residential development.

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In addition to the Third Round obligation of one affordable unit for each eight proposed market rate-units and one affordable unit for every 25 jobs created, the City of Absecon is obligated to provide approximately 180 affordable housing units under the First and Second round according to the COAH Annual Report – 2002-2003.

The Fair Housing Act, NJSA 52:27D-307 et. seq., dictate that every municipality in the State is required to provide opportunities for the development of its “fair share” of affordable housing. **Municipalities are not required to participate in the COAH program or provide affordable housing, but each municipality has constitutional obligation to provide for a realistic opportunity for the development of affordable housing with its framework of its land use regulations.**

The following Ordinance will require that all future development provide affordable housing or make a contribution to help support affordable housing in the Absecon Train Station Area Overlay.

The following Affordable Housing Ordinance is submitted for review and comment. This ordinance was composed based on discussions with the Planning Board Master Plan Committee members, Planning Board members at numerous meetings while preparing the 2005 Reexamination of the Master Plan. At those meetings we discussed components of the Reexamination Report and the Affordable Housing Ordinance. This proposed ordinance is consistent with and the 2005 Reexamination Report of the Master Plan.

Upon review and approval by the Planning Board the following Ordinance should be referred to City Council with findings that it is consistent with the Master Plan and recommend it be adopted.

NJSA 40:55D-26a states (in part) that Aprior to the adoption of a development regulation, or amendment thereto, the Planning Board shall make and transmit to the governing body, within 35 days after referral, a report including identifications of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the Master Plan and recommendations concerning these inconsistencies and any other matters as the Board deems appropriate. Because this proposal originated at the Planning Board and the proposal is consistent with the Master Plan and this proposal is being referred to City Council with the statement that it is consistent with the Master Plan, the City Council does not need to refer it back to the Planning Board prior to final adoption.

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The following Ordinance is offered for informal review and comment, which is intended to replace §224-194 and Article VIII in its entirety.

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**AN ORDINANCE RESCINDING AND DELETING IN ITS ENTIRETY  
ARTICLE VIII R-FSH RESIDENTIAL FAIR SHARE HOUSING DISTRICT  
, §224-35, §224-36, §224-37, §224-38, §224-39, §224-40 §224-41, §224-  
42, §224-194, LOW AND MODERATE INCOME HOUSING AND  
REPLACING ARTICLE VIII WITH A NEW ARTICLE VIII ENTITLED  
AFFORDABLE HOUSING ORDINANCE OF THE CITY OF ABSECON**

**WHEREAS**, the Absecon City Planning Board adopted a Master Plan Reexamination Report and Master Plan Update on May 23, 2006; and

**WHEREAS**, the Master Plan Reexamination Report and Master Plan Update recommended creating an Affordable Housing Ordinance.

**NOW THEREFORE, BE IT ORDAINED** by the Governing Body for the City of Absecon City, County of Atlantic and State of New Jersey, that Chapter 224, Absecon Developmental Ordinance and the Absecon City Zoning Map is hereby amended as follows:

**§224-194 AFFORDABLE HOUSING**

**Section 1. SHORT TITLE**

This Ordinance shall be known and may be cited as: **AFFORDABLE HOUSING ORDINANCE OF ABSECON CITY.**

**Section 2. PURPOSE**

The Mount Laurel decisions stand for the principle that each municipality has a constitutional obligation to provide opportunities for the development of low and moderate income housing. The Mount Laurel decisions and the Fair Housing Act, NJSA 52:27D-301 et. seq., dictate that every municipality in the State is required to provide opportunities for the development of it's "fair share" of low and moderate income housing. The purpose of this Ordinance is to advance the public welfare and comply with the municipality's constitutional obligation to provide the opportunity for the municipality's fair share of low and moderate income housing.

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**Section 3. DEVELOPMENT REQUIRED TO PROVIDE AFFORDABLE HOUSING**

A. Within any zoning district permitting residential development or as a result of a use variance permitting residential development, developers shall provide a minimum of one (1) affordable housing unit for every eight (8) market rate housing units or the developer may make contribution in lieu of providing affordable housing in accordance with Section 5.

B. Developers within any zone permitting non-residential development shall provide a minimum of one (1) affordable housing unit for every twenty-five (25) jobs created. The developer of the non-residential development is required to construct affordable housing in the Absecon Train Station Area Overlay, or the developer may make a contribution in lieu of providing affordable housing in accordance with Section 5.

C. Within the Absecon Train Station Overlay Area, developers are required to provide affordable housing units if they avail themselves of the incentives set forth within §268 (B), a, Density; §269 (C), Building Coverage; §269 (D), Impervious Coverage; §269 (G), Building Height and §272, Parking Reduction. The development shall include a minimum of two (2) affordable housing units for every eight (8) market rate units [or a minimum of twenty-five (25%) percent]. Developers cannot make contributions in lieu of constructing affordable housing units in the Absecon Train Station Area Overlay. (Article XXXIII)

**Section 4 PROCEDURE**

A. The units, once quantified, are specifically identified in the site plan, along with the support services required to sustain low- and moderate-income residences. It is the intent herein not only to encourage the development of low- and moderate-income housing but also to encourage and sustain a quality of life for the low- and moderate-income residents within the proposed development.

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B. In preparing plans for low- and moderate-income housing, developers shall follow the following minimum criteria:

(a) Bedroom distribution of low- and moderate-income units:

[1] A minimum 35% shall be two-bedroom units.

[2] A minimum 15% shall be three-bedroom units.

[3] A maximum 20% may be efficiency units.

(b) Pricing stratification for purchased housing shall be as follows:

<b>Category</b>	<b>Percentage of Units</b>	<b>Affordability Range (Target Market) in Percentage of Median Income</b>
Low	10	40 to 42.5
	30	42.6 to 47.5
	60	47.6 to 50
Moderate	10	50.1 to 57.5
	10	57.6 to 64.5
	10	64.6 to 68.5
	10	68.6 to 72.5
	20	72.6 to 77.5
	40	77.6 to 80

C. In pursuing the development of low- and moderate-income housing, the Planning Board may grant bulk variances and/or design waivers necessary to assist in adjusting the site plan configuration, thereby allowing the placement of disbursed low- and moderate-income housing within the limits of any specific project. This procedure will enable the CITY to work closely with the developer to tailor a specific site plan in the event that traditional zoning controls frustrate good site planning.

D. The developer shall deed-restrict all newly constructed low- and moderate-income sales units for a period of not less than 30 years and provide copies of a Council On Affordable Housing adopted restrictive covenant and mortgage lien along with details of the methods of screening applicants to be used as part of the site plan review process.

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E. Prior to the issuance of the first certificate of occupancy for any development, the developer shall submit to the administrative agent as designated by City Council a list of all low- and moderate-income units to be developed. This list shall include:

- (a) The unit number or address.
- (b) The targeted income group.
- (c) The number of bedrooms.
- (d) The affordability range.

F. The designated administrative agent shall maintain a comprehensive file on low- and moderate-income housing units. Prior to the issuance of a certificate of occupancy or certificate of continued occupancy, a statement from the screening agent certifying the proposed occupant's eligibility shall be submitted to the designated administrative agent and maintained in the file.

G. Affordable housing units to be built in accordance with the following schedule:

Percentage of Market-rate Units	Minimum Percentage of Low- and Moderate-Income Units
Completed	Completed
25	0
25 + 1 unit	10
50	50
75	75
90	100

H. Affirmative marketing. At the time of the initial occupancy of low- and moderate-income units the developer must demonstrate that have an outreach and marketing program to encourage participation of local persons to attempt to see that up to 50% of the units be occupied by persons currently living or working in Absecon City.

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I. Prior to the issuance of a certificate of occupancy, the developer shall pay to the designated administrative agent any management or marketing fees adopted by the agency.

J. Contributions in lieu of constructing affordable housing units on site shall only be used to fund eligible affordable housing activities within the Absecon Train Station Area Overlay (Article XXXIII).

K. Contributions in lieu of constructing affordable units shall be deposited in a separate, interest-bearing housing trust fund.

**Section 5. CONTRIBUTION IN LIEU OF CONSTRUCTING AFFORDABLE HOUSING UNITS**

A. Within any zoning district permitting residential development or as a result of a use variance permitting residential development, developers may make a contribution of \$35,000.00 (or an amount set by N.J.A.C. 5:94-5.4 Amount and duration of contributions, whichever is greater ) per affordable housing unit in lieu of providing affordable housing.

B. Developers within any zone permitting non-residential development may make a contribution of \$35,000.00 (or an amount set by N.J.A.C. 5:94-5.4 Amount and duration of contributions, whichever is greater ) per affordable housing unit in lieu of providing affordable housing.

C. Contributions will be used to help fund affordable housing units and affordable housing activities in the Absecon Train Station Area Overlay (Article XXXIII).

D. Residential developments with less than eight (8) market rate units or Non-residential developments creating less than twenty-five (25) jobs shall make a pro-rata share contribution in lieu of constructing affordable housing.

**Sections 6. EXEMPTIONS**

A. Developers that have received preliminary subdivision or site plan approval prior to the effective date of this Ordinance shall be exempt from providing affordable housing unless the developer seeks a substantial change in the approval.

B. Religious organizations that engage in construction activities for religious purposes shall be exempt from providing affordable housing.

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C. Development by public agencies, public hospitals, non-profit educational or religious institutions, charitable or not-for-profit entities legally established in accordance with the laws of the state of New Jersey shall be exempt from providing affordable housing.

**Section 7. COLLECTION OF CONTRIBUTION IN LIEU OF CONSTRUCTING AFFORDABLE HOUSING**

A. Developers shall pay 50 percent of the contribution to Absecon City at the issuance of permits.

B. Developers shall pay the remaining contribution to Absecon City at the issuance of certificates of occupancy. The developer shall be responsible for paying the difference between the contribution at certificate of occupancy and the contribution made at the issuance of building permit.

C. Contributions that are challenged shall be placed in an interest bearing escrow account by the municipality. If all or a portion of the contested contributions are returned to the developer, the accrued interest on the returned amount shall also be returned.

**Section 8. HOUSING TRUST FUND**

A. There is hereby created an interest bearing trust fund bank account with a bank to be named by City Council for the purpose of receiving contributions from residential and non-residential developers. All contributions made by developers pursuant to this Ordinance shall be deposited in this fund. No money shall be expended from the housing trust fund unless the expenditure conforms to a spending plan in accordance with COAH Guidelines.

If COAH determines that Absecon City is not in conformance with COAH's guidelines regarding contributions in lieu of constructing affordable housing, COAH is authorized to direct the manner in which all contributions collected pursuant to this Ordinance shall be expended. Such authorization is pursuant to: this Ordinance, COAH's guidelines on contributions and the written authorization from the Governing, Body to a Bank to be named by City Council.

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**Section 9. USE OF FUNDS**

A. Money deposited in a housing trust fund shall be used for the construction of affordable housing and affordable housing activities in the Absecon Train Station Overlay Area. Such activities may include, but are not necessarily limited to: housing rehabilitation; new construction; the purchase of land for low and moderate income housing; extensions and/or improvements of roads and infrastructure low and moderate income housing sites; and/or assistance designed to render units more affordable to low and moderate income households and administrative costs necessary to implement Absecon's housing element.

B. Absecon will dedicate no more than twenty percent (20%) of contributions made for administrative purposes. Those purposes shall include but not necessarily be limited to salaries and benefits for municipal employees or consultant fees necessary to develop or implement a rehabilitation program; a housing element; and an affirmative marketing program. These monies shall be spent either in the one year period of protection sought by the City; during the implementation of the current plan which will extend beyond the one year period of protection and/or during the period of implementation of any affordable housing plan for the third housing cycle.

C. Contributions may be used to reimburse the City for the outlay of funds or bonding for current housing activities, if any, prior to the collection of contributions.

**Section 10. DEFINITIONS**

For definitions of terms in Article VIII, refer to §224-5, Definitions as amended.

**Section 11. INCONSISTENCY**

Any part of parts of any Ordinances which are found to be inconsistent with this Ordinance shall be deemed to have been repealed to the extent of such inconsistency.

**Section 12. EFFECTIVE DATE**

This Ordinance shall take effect upon passage and publication according to law and the filing of same with the County Planning Board in accordance with N.J.S.A. 40:55D

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**NOTICE IS HEREBY GIVEN** that the foregoing Ordinance was introduced and passed the first reading at a meeting of the City Council of the City of Absecon City, County of Atlantic and State of New Jersey, held on \_\_\_\_\_, and said Ordinance will be further considered for final passage and adoption at a public hearing to be held at the Municipal Complex located at 500 Mill Road, Absecon, New Jersey 08201, on \_\_\_\_\_, at 7:30 p.m. or as soon thereafter as the matter may be reached.

**BY ORDER OF THE MUNICIPAL COUNCIL OF THE CITY OF ABSECON**

Approved: \_\_\_\_\_  
Peter C. Elco, Mayor

Attest: \_\_\_\_\_  
Carie A. Crone, Acting Municipal Clerk

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