

**Fair Share Housing Center**

510 Park Boulevard  
Cherry Hill, New Jersey 08002  
P: 856-665-5444  
F: 856-663-8182  
Attorneys for Fair Share Housing Center  
By: Bassam F. Gergi, Esq. (302842019)  
bassamgergi@fairsharehousing.org

**Fair Share Housing Center, Inc.,**

**Plaintiff,**

**v.**

**The City of Hoboken, the City of  
Hoboken Planning Board, and Just  
Block 112, LLC,**

**Defendants.**

Superior Court of New Jersey  
Law Division, Hudson County

Docket No. HUD-L-\_\_\_\_\_

**Civil Action**

**Complaint in Lieu of  
Prerogative Writs**

Plaintiff Fair Share Housing Center, Inc. ("FSHC"), by way of Complaint in Lieu of Prerogative Writs, against Defendants the City of Hoboken ("Hoboken" or "City"), the Planning Board of the City of Hoboken (the "Board" or "Planning Board"), and Just Block 112, LLC ("Just Block" or "Redeveloper"), alleges and says that:

**Introductory Statement**

1. This is an action brought pursuant to New Jersey Court Rule 4:69-1, et seq., and Southern Burlington Cty. N.A.A.C.P. v. Mt. Laurel Tp., 92 N.J. 158 (1983) ("Mount Laurel II"), the New Jersey Fair Housing Act, N.J.S.A. 5:27D-301, et seq. (the "Act"), (collectively, "Mount Laurel"), challenging the City of Hoboken's April 15, 2020 adoption of an amended Redevelopment Plan for the

Western Edge Redevelopment Area in the City of Hoboken.

2. The amended Redevelopment Plan for the Western Edge Redevelopment Area would allow the City to permit the Redeveloper to build 150 additional residential units and a five-story taller, larger hotel within the Jefferson Street Subarea while requiring no affordable housing set-aside in the 150 additional units.

### **The Parties**

3. Fair Share Housing Center is a non-profit organization in the State of New Jersey founded in 1975, dedicated to the development of affordable housing in New Jersey.

4. The City of Hoboken is a municipal entity of the State, created pursuant to and required to act consistent with and in furtherance of the Constitution and laws of the State and the United States of America.

5. The Hoboken Planning Board is a municipal entity of the State, created by the City pursuant to, and required to act consistent with and in furtherance of its own ordinances, the Municipal Land Use Law, N.J.S.A. 40:55-1, et seq. (the "MLUL"), and the Constitution and laws of the State and the United States as a municipal "planning and zoning board," as defined in the MLUL.

6. Just Block 112, LLC, is the designated Redeveloper for a project within the Jefferson Street Subarea of the Western Edge Redevelopment Area in the City of Hoboken. Just Block entered into a redevelopment agreement with the City of Hoboken in April

2019, amended in October 2019, under the Western Edge Redevelopment Plan. Just Block is also known as Pegasus Partners.

7. Just Block is the designated Redeveloper for the project within the Jefferson Street Subarea of the Western Edge Redevelopment Area and is named as a defendant so that it will be subject to the Court's decision.

#### **Factual Background**

**A. In 2012, the City of Hoboken Adopted an Ordinance That Generally Requires, Subject to Certain Conditions, a 10% Set-Aside of Affordable Housing from New Residential Development.**

8. In 2012, the City of Hoboken adopted an ordinance that generally requires, subject to certain conditions, a 10% set-aside of affordable housing in new residential development.

9. The ordinance is commonly referred to as a "mandatory affordable housing set-aside ordinance" or an "inclusionary zoning ordinance."

10. The ordinance, Ordinance No. Z-208, states that the City of Hoboken was adopting a requirement for a 10% set-aside of affordable housing because "the City of Hoboken recognizes the Constitutional requirement of every New Jersey municipality to provide an opportunity for the construction and rehabilitation of low and moderate income housing." (A true and correct copy of Ordinance No. Z-208 as presented on Second Reading in 2012 is attached hereto as **Exhibit A.**)

11. The ordinance states that "the City is committed to

remaining affordable by maintaining a diversity and choice in the mix of housing types available within the municipality.” (Exh. A.)

12. The ordinance states that “the New Jersey Supreme Court, the New Jersey Legislature as well as the Council on Affordable Housing (‘COAH’) have all recognized that inclusionary ordinances requiring a mandatory set-aside of affordable housing, either on or off-site, along with appropriate incentives represents an effective and fair means of encouraging and ensuring the production of affordable housing by the private sector.” (Exh. A.)

13. The ordinance states that “increases in permitted residential density or floor area ratio . . . accompanied by a mandatory set-aside of affordable housing, constitute incentives to private developers and compensatory benefits as required by the Fair Housing Act.” (Exh. A.)

14. The ordinance states that “new and amended redevelopment plans prepared and adopted under the Local Housing and Redevelopment Law, N.J.S.A. 40A.12A-1 et seq., that increase residential density or FAR or permit residential uses in zoning districts restricted against such uses and require a mandatory set-aside of affordable housing also constitute a compensatory benefit for inclusionary development.” (Exh. A.)

15. Ordinance No. Z-208 is codified in Chapter 65A of the City of Hoboken’s Code. (A true and correct copy of Chapter 65A of the Hoboken Code is attached hereto as **Exhibit B.**)

16. Section 65A-2 of Hoboken's code states that it shall apply to "all development of property in the City of Hoboken subject to approval by either the Planning Board or Zoning Board of Adjustment" and to "all development . . . for approval in conjunction with a redevelopment plan adopted pursuant to the Local Redevelopment and Housing Law that includes residential uses."

(Exh. B.)

17. Section 65A-2 states that all "such development" to which it applies "shall include housing affordable to low- and moderate-income individuals and families in accordance with the standards of this chapter, with the exception of the exemptions enumerated in Subsection B." (Exh. B.)

18. Subsection B of Section 65A-2 exempts "[d]evelopment under an adopted redevelopment plan in effect as of the effective date of this chapter, unless amended subsequently to increase the density or floor area ratio." (Exh. B (emphasis added).)

19. Subsection B of Section 65A-2 also exempts "development of 10 residential units or fewer." (Exh. B.)

20. For developments not exempted by Subsection B, Subsection C of Section 65A-2 generally requires that "[e]ach development subject to this chapter shall contain" at least "[t]en percent" affordable housing. (Exh. B.)

21. Subsection C of Section 65A-2 establishes other guidelines relevant to the provision of affordable housing. (Exh.

B.)

22. Subsection D(3) of Section 65A-2 states that "the intent of this chapter [is] to prevent evasion of its requirements by the artificial subdivision, separation, construction, or rehabilitation of a project into smaller developments through the manipulation of the design or implementation schedule." (Exh. B (emphasis added).)

**B. In 2015, the City of Hoboken Adopted a Western Edge Redevelopment Plan That Requires a 10% Set-Aside of Affordable Housing.**

23. In 2015, the City of Hoboken adopted a Redevelopment Plan for the Western Edge Redevelopment Area ("Western Edge").

24. The 2015 Redevelopment Plan for Western Edge states that it was adopted by the Hoboken City Council on August 5, 2015. (A true and correct copy of the 2015 Redevelopment Plan for Western Edge is attached hereto as **Exhibit C.**)

25. The 2015 Redevelopment Plan for Western Edge states that it covers Block 92, Lots 1.01 and 1.02; Block 106, Lot 1; and Block 112, Lot 1. (Exh. C.)

26. The 2015 Redevelopment Plan for Western Edge states it "provides a framework for the redevelopment of a number of properties in the northwestern portion of the City in proximity to the Ninth Street Hudson-Bergen Light Rail Station. The Redevelopment Plan sets forth standards and guidelines for land use and design; circulation and parking; open space and recreation; and

resiliency.” (Exh. C.)

27. Section 8.2 of the 2015 Redevelopment Plan for Western Edge states that “[t]he development of residential market rate units as part of a proposed redevelopment project in the Western Edge Redevelopment Area shall meet the affordable housing requirements of the applicable ordinances of the City of Hoboken. Affordable units equal to not less than 10% of the total proposed residential units, including Live-Work units, shall be provided.” (Exh. C.)

28. The 2015 Redevelopment Plan for Western Edge states that “[t]he Redevelopment Agreement(s) shall include a provision that requires the redeveloper to provide all inclusionary affordable housing that is generated by its project, to the extent required by law or the Redevelopment Plan.” (Exh. C (emphasis added).)

**C. In 2019, the City of Hoboken Adopted an Amended Western Edge Redevelopment Plan That Continues to Require a 10% Set-Aside of Affordable Housing.**

29. In 2019, the City of Hoboken adopted an amended Redevelopment Plan for the Western Edge Redevelopment Area that continues to require a 10% set-aside of affordable housing. (A true and correct copy of the 2019 amended Redevelopment Plan for Western Edge is attached hereto as **Exhibit D.**)

30. The 2019 amended Redevelopment Plan for Western Edge states that it was adopted by the Hoboken City Council on September

18, 2019. (Exh. D.)

31. Section 8.2 of the 2019 amended Redevelopment Plan for Western Edge states that "[t]he development of residential market rate units as part of a proposed redevelopment project in the Western Edge Redevelopment Area shall meet the affordable housing requirements of the applicable ordinances of the City of Hoboken. Affordable units equal to not less than 10% of the total proposed residential units, including Live-Work units, shall be provided." (Exh. D.)

32. The 2019 amended Redevelopment Plan for Western Edge states that "[t]he Redevelopment Agreement(s) shall include a provision that requires the redeveloper to provide all inclusionary affordable housing that is generated by its project, to the extent required by law or the Redevelopment Plan." (Exh. D (emphasis added).)

**D. The City of Hoboken's 2018 Master Plan Reexamination Report Recognizes the Deep Need for Affordable Housing and the 10% Affordable Housing Set-Aside Requirement.**

33. In June 2018, the City of Hoboken adopted the 2018 Master Plan Reexamination Report ("2018 Reexamination Report"). (A true and correct copy of Hoboken's 2018 Reexamination Report is attached hereto as **Exhibit E.**)

34. The 2018 Reexamination Report states that, after "substantial research, public outreach and involvement of key stakeholders," one of the "themes" that composes the "vision" of



the City is "shared prosperity." (Exh. E.)

35. The 2018 Reexamination Report states that "[t]he City's fast-paced growth and high desirability as a place to live has created a housing affordability crisis as the demand for housing exceeds the supply, putting intense pressure on real estate prices and rents." (Exh. E.)

36. The 2018 Reexamination Report states that "high demand has increased the cost of living in Hoboken." (Exh. E.)

37. The 2018 Reexamination Report states that "the median price to purchase a condo unit in Hoboken was \$620 per square-foot in 2016, more than 16 percent higher than the average price in Hudson County." (Exh. E.)

38. The 2018 Reexamination Report states that "[m]edian apartment rental prices were 25 percent higher in Hoboken compared with Hudson County." (Exh. E.)

39. The 2018 Reexamination Report states that Hoboken has "a residential housing market with large, expensive units -- unaffordable to all but very high income earners." (Exh. E.)

40. The 2018 Reexamination Report states that, "[n]ow, the challenge is to maintain and promote a more balanced mix of unit types, in terms of size and price, to ensure that Hoboken provides a diversity of housing options at income levels that serve the full range of the City's residents." (Exh. E.)

41. The 2018 Reexamination Report states:

Hoboken's housing cost burdened residents represent nearly 30 percent of the City's population. Having to spend a greater share of income on housing expenses leaves Hoboken residents with less disposable income to spend on groceries, dining out, shopping, transportation, childcare, healthcare, and other spending categories, all of which contribute to the Hoboken economy.

[(Exh. E.)]

42. The 2018 Reexamination Report summarizes "recent housing affordability initiatives" in the City of Hoboken. (Exh. E.)

43. The 2018 Reexamination Report states that "Hoboken passed an ordinance in 2012 which generally requires a 10 percent affordable housing set-aside for residential construction of more than 10 units." (Exh. E.)

44. The 2018 Reexamination Report states that "all redevelopment plans approved since 2009, including Hoboken Yard, Neumann Leathers, and Western Edge, require that at least 10 percent of new residential units be set aside as affordable units." (Exh. E (emphases added).)

45. The 2018 Reexamination Report states that "[t]hese projects are some of the first units required by the City's 2012 affordable housing ordinance." (Exh. E.)

46. The 2018 Reexamination Report includes a series of recommendations that "[t]he City should advance and support . . . [to] create a diversity of housing options so that residents are

not priced out of the City.” (Exh. E.)

**E. The City of Hoboken’s 2018 Master Plan Land Use Element Recognizes the Deep Need for Affordable Housing and the 10% Affordable Housing Set-Aside Requirement.**

47. In June 2018, the City of Hoboken adopted the 2018 Master Plan Land Use Element (“2018 Master Plan”). (A true and correct copy of Hoboken’s 2018 Master Plan is attached hereto as **Exhibit F.**)

48. The 2018 Master Plan states that it “attempts to guide . . . [t]he City’s vision for the arrangement of land uses, and how land use patterns could change in the future to fulfill City objectives (e.g., . . . to encourage housing that is more affordable and leads to greater resident diversity . . .).” (Exh. F.)

49. The 2018 Master Plan states that

the City is reaching a housing affordability crisis. Current regulations require only that a developer provide an affordable housing set-aside of 10% in buildings containing 10 or more units, where the applicant seeks a D variance or as part of a Redevelopment Plan.

[(Exh. F (emphases added).)]

50. The 2018 Master Plan states that one of the City’s goals is “shared prosperity” and it states:

One of the state’s fastest growing municipalities, Hoboken is also among the most educated and affluent places in New Jersey that has continued to attract new residents and businesses. This trend of growth and prosperity is likely to continue into the next decade and attract more high-end

residential developments and private investment, which may bring overall improvements to the City's tax base, standard of living, and amenities. On the flip side, if left unmanaged, this trend can threaten the City's diversity and vitality by marginalizing young professionals, the aging population, and low-income communities, and by tipping the scale in favor of highest and best land uses dictated by the market, that potentially may be unsupportive of the local community and middle economy.

[(Exh. F.)]

51. The 2018 Master Plan states that, among its "recommendations . . . that pertain to land use issues," is to "[p]rovide affordable housing options for family and non-family households, and lower-income communities." (Exh. F.)

52. The 2018 Master Plan states that

[h]ousing affordability is one of the key issues facing Hoboken. Construction of new apartments is booming, but cannot keep up with demand. Hoboken has transitioned from a majority working-class city to one with income disparity brought on by an influx of high-income residents, and housing options marketed to that population. One of the issues expressed by both residents and developers is the lack of more affordable smaller-sized apartments in the City compared with large apartments

[(Exh. F.)]

53. The 2018 Master Plan recommends that the City adopt an "Affordable Housing Zone overlay" that "would encourage future revitalization of properties by allowing for them to be reconstructed at greater heights and densities, subject to

satisfaction of a minimum 20% set-aside for permanently affordable units." (Exh. F.)

54. The 2018 Master Plan states that the City "must . . . adopt a Housing Element and Fair Share Plan." (Exh. F.)

**F. On March 18, 2020, the Hoboken City Council Approved a Resolution Referring to the Planning Board for Consistency Review an Amendment to the Western Edge Redevelopment Plan That Would Exempt Up to 150 Units from the 10% Affordable Housing Set-Aside Requirement.**

55. On March 18, 2020, the Hoboken City Council approved a resolution that referred to the Planning Board for consistency review an ordinance amendment to the Western Edge Redevelopment Plan that would exempt up to 150 units from the 10% affordable housing set-aside requirement. (A true and correct copy of the March 18, 2020 resolution is attached hereto as **Exhibit G.**)

56. The text of the referring resolution does not state anything about changes to the 10% affordable housing requirement in the Western Edge Redevelopment Plan. (Exh. G.)

57. The ordinance referred to the Planning Board, Ordinance No. B-255, was also introduced on March 18, 2020. (A true and correct copy of the introduced ordinance is attached hereto as **Exhibit H.**)

58. The introduced ordinance states that "the City intends to amend the [Western Edge] Redevelopment Plan in an effort to create opportunities for the construction of public recreation

space, including a public swimming pool, as further set forth below." (Exh. H.)

59. The introduced ordinance states that "the City has determined that creating opportunities for recreation within the Western Edge Redevelopment Area is consistent with the goals and objectives of the Redevelopment Plan." (Exh. H.)

60. The introduced ordinance does not state anything about the reason for the changes to the affordable housing requirement in the Western Edge Redevelopment Plan. (Exh. H.)

**G. The Planning Board's Professionals Did Not Analyze Whether Allowing for 150 Additional Residential Units and a Five-Story Taller, Larger Hotel and No Affordable Housing Set-Aside on the Additional Units Was Consistent with the Master Plan.**

61. Several documents that are part of the Planning Board's agenda packet for the April 7, 2020 consistency review hearing explain pertain to the proposed amendments to the Western Edge Redevelopment Plan.

62. A letter dated March 19, 2020, from James J. Farina, Hoboken City Clerk, stated that "there was a resolution passed by the Governing Body at the March 18, 2020 city council meeting in regards to" proposed amendments to the Western Edge Redevelopment Plan. (A true and correct copy of Mr. Farina's March 19, 2020 letter is attached hereto as **Exhibit I.**)

63. Mr. Farina wrote:

The 2nd reading will be heard once the application is certified by the Planning Board

secretary. Pursuant to pursuant to the Redevelopment Law, including but not limited to N.J.S.A. 40A:12A-7, on behalf of the Office of the City Clerk, this resolution and ordinance is hereby being referred to you and the Planning Board for its review as required by statute. The Governing Body will wait for the Planning Board for it's review and recommendations.

[(Exh. I.)]

64. Mr. Farina's letter does not state anything about changes to the 10% affordable housing requirement in the Western Edge Redevelopment Plan. (Exh. I.)

65. A memo dated April 1, 2020, from Jessica Giorgianni, Principal Planner, and addressed to the Hoboken City Council, is titled "Western Edge Redevelopment Plan: Proposed Amendments." (A true and correct copy of Ms. Giorgianni's April 1 memo is attached hereto as **Exhibit J.**)

66. The April 1 memo states that it serves as a summary of the proposed amendments to the Western Edge Redevelopment Plan, originally adopted August 5, 2015. The Amendments have been proposed by the conditionally designated developer, Just Block 112, LLC (Pegasus Partners), with input and revisions from City Staff and the City Council Subcommittee. The Amendments largely impact development within the Jefferson Street Subarea of the Redevelopment Plan, which encompasses the entirety of City Block 112.

A Redevelopment Agreement by and between the City of Hoboken and Just Block 112, LLC was executed in April 2019, and amended in October 2019. The Redevelopment Agreement allows for a project consisting of two (2) residential towers containing 207 residential

units, including 21 affordable units, and a separate hotel at 166' over DFE. Retail and parking would be provided at the base of each building.

The amendments now being considered by City Council are intended to create opportunities for the construction of a public recreation facility that includes a community pool.

[(Exh. J.)]

67. The April 1 memo states that the proposed amendments to the Western Edge Redevelopment Plan would allow the City to give the Redeveloper "up to five (5) additional stories on all buildings" in the Jefferson Street Subarea. (Exh. J.)

68. The April 1 memo states that the proposed amendments to the Western Edge Redevelopment Plan would allow the City to give the Redeveloper bonus floor to area ratio and increase the maximum height of mixed-used buildings with residential from 136' to 186'. (Exh. J.)

69. The April 1 memo states that the proposed amendments to the Western Edge Redevelopment Plan would allow the City to give the Redeveloper an increase in the height of non-residential mixed-used buildings from 146' to 196'. (Exh. J.)

70. The April 1 memo states that the proposed amendments to the Western Edge Redevelopment Plan would allow the City to give the Redeveloper an increase in the height of an allowable hotel in the Jefferson Street Subarea from 166' to 216'. (Exh. J.)

71. The April 1 memo states that the existing Western



Edge Redevelopment Plan allowed for 207 residential units in the Jefferson Street Subarea. (Exh. J.)

72. The April 1 memo states that the proposed amendments to the Western Edge Redevelopment Plan "would allow a maximum of 150 additional units." (Exh. J (emphasis added).)

73. The April 1 memo states that the proposed amendments to the Western Edge Redevelopment Plan would allow a maximum total of 357 residential units. (Exh. J.)

74. The April 1 memo states that the proposed amendments to the Western Edge Redevelopment Plan would not apply the 10% affordable housing requirement to the 150 additional units that the Redeveloper could be allowed. (Exh. J.)

75. The April 1 memo states that "where the City negotiates with a redeveloper to allow bonus residential development in exchange for Public Recreation and Public Pool Community Benefits, those additional bonus units would not be subject to the 10% affordable housing requirement." (Exh. J.)

76. In summary, the April 1 memo states that, under the proposed amendments to the Western Edge Redevelopment Plan, the Redeveloper could be allowed to build 150 more residential units in the Jefferson Street Subarea for a total of 357 units (up from 207 units initially) but that the number of affordable units could remain at 21 affordable units because the 10% requirement would not be applied to the 150 additional units.

77. The April 1 memo does not analyze whether the change to the affordable housing requirement is consistent with the City's inclusionary zoning ordinance or the City's Master Plan.

78. If the City were to allow the redeveloper to build 357 units and only 21 affordable units, that would be an affordable housing set-aside of about 5.9%.

79. An April 3, 2020, memo from George Wheatle Williams, P.P., A.I.C.P., to the Planning Board's Secretary states that it analyzes whether "the proposed Ordinance Amending the Redevelopment Plan for the Western Edge Redevelopment Area consistent with the Hoboken Master Plan pursuant to 40:55D-26(a) of the Municipal Land Use Law {MLUL} and relevant section(s) of the Local Housing and Redevelopment Law {LHRL}?" (A true and correct copy of Mr. Williams's April 3 memo is attached hereto as **Exhibit K.**)

80. The April 3 memo copies the exact same paragraph from Ms. Giorgianni's April 1 memo regarding a factual summary of the proposed amendments to the Western Edge Redevelopment Plan that could allow 150 additional units with no affordable housing requirement. (Exh. K.)

81. The April 3 memo does not analyze whether the change to the affordable housing requirement in the Western Edge Redevelopment Plan is consistent with the 2018 Master Plan or the City's inclusionary zoning ordinance. (Exh. K.)

H. On April 7, 2020, the Planning Board Conducted a Consistency Review Hearing on the Proposed Amendments to the Western Edge Redevelopment Plan That Raised Concerns About the Exemption of 150 Units from the 10% Affordable Housing Requirement, Was Given Inaccurate Information, and Concluded That It Was Best to Adjourn a Determination Until April 14.

82. On April 7, 2020, the Planning Board conducted a consistency review hearing on the proposed amendments to the Western Edge Redevelopment Plan. (A true and correct copy of the transcript from the Planning Board's April 7, 2020 hearing is attached hereto as **Exhibit L.**)

83. At the April 7 hearing, the Board's Planner, Mr. Williams, had the following exchange with the Board's Chair Frank Magaletta:

MR. WILLIAMS: It adds five stories under the bonus and the -- while it increases the number of units, it does not increase the affordable -- the number of affordable units proportionate with that increase of the market rate.

CHAIRMAN MAGALETTA: It exempts those units, right?

MR. WILLIAMS: Again?

CHAIRMAN MAGALETTA: It exempts those units, right?

MR. WILLIAMS: Correct.

CHAIRMAN MAGALETTA: Okay.

MR. WILLIAMS: So in terms of affordable housing, as this Board knows from our prior reviews, that the Land Use Element and the Master Plan Reexamination Report speak extensively about the need for the overall

improvement of affordability. In the City of Hoboken there are some very specific recommendations in the Land Use Element, including a trust for affordable housing, the need for housing -- an affordable housing overlay district, and then again the very general rubric for an increase in the inventory of affordable housing wherever possible. So interestingly here, that bonus discussion does not increase, as Mr. Chairman just mentioned, the affordable units for -- as part of the bonus. . . .

[(Exh. L.)]

84. Board Chair Magaletta then stated

I guess my focus, and the thing that really caught me when I read the proposed ordinance was the exemption for those 150 units, those bonus units. . . .

The committee when we drafted the Master Plan Reexam and Land Use Element, I mean, it's more the master plan, we did a lot of demographic search about Hudson County and the area, and this is a change that happened there as far as income, inequality, and I feel strongly that the exemption of 150 units of the affordable housing requirement is inconsistent with the master plan and what we are trying to achieve, and I am even more mindful of where we are now as far as the economy, what is going to happen in six months and having a decent place to live.

Now, I am not cold to the developer. I understand that this is a business, but I also understand this is our community, so my issue really is with that. I feel pretty strongly on that one.

You know, lots were vacant recently, and, you know, it is a very telling problem with this town as far as affordability, and I think that's -- and while you think of 10

percent, so that's 15 units, all right. Well, that's 15 units. It adds up.

[(Exh. L.)]

85. Board Commissioner Anne Lockwood stated:

Well, I agree that I am concerned about the consistency in connection with the affordable housing, and, you know, as the Chairman was speaking to the issue of the turning of the economy now, it may be that the benefit to the community is still last, if at all, and that would be my concern, and I think that it -- by not having that, in fact, by not having the 10 percent being consistent, I think that creates a problem for the -- for consistency, so I am -- I know that that -- that the ordinance is generally considered consistent, but I am confused how it can be with that 10 percent problem of affordable housing.

[(Exh. L.)]

86. Board Commissioner Lea Cloud stated:

I share the concern of the additional 150 units both being exempt from not only the affordable housing component, but being exempt from any parking, which I think is a double -- it seems like a double -- whammy, yeah. . . .

. . . But, Jim, your point about, you know, not only being -- they were already getting an additional five stories because they were getting the infrastructural benefits, but then the additional five stories, it just seems like it is weighing very well for the developer and not weighing so well for the town, and that, I find that concerning.

[(Exh. L.)]

87. Several Planning Board members asked questions and were given inaccurate information.

88. In response to a question from a fellow Commissioner, Board Commissioner James Doyle stated that "I can tell you that there is no ordinance requiring 10 percent in redevelopment zones, so it is not a hard and fast law that in a redevelopment zone, you have to give 10 percent. There is an ordinance that says if you get a variance for density, and it is over ten units, you have to have 10 percent." (Exh. L.)

89. Mr. Doyle's statement was inaccurate and was not corrected.

90. Hoboken's inclusionary zoning ordinance generally requires a 10% set-aside of affordable housing in "all development . . . for approval in conjunction with a redevelopment plan adopted pursuant to the Local Redevelopment and Housing Law that includes residential uses." (Exhs. A & B.)

91. Hoboken's inclusionary zoning ordinance specifically states that its requirements shall apply to "[d]evelopment under an adopted redevelopment plan" when that redevelopment plan is "amended subsequently to increase the density or floor area ratio." (Exhs. A & B.)

92. The Board's Planner also gave inaccurate information that was not corrected.

93. Mr. Williams stated that "[t]here is no specific language - there's no specificity in the master plan about percentages for affordable housing . . . ." (Exh. L.)

94. The 2018 Master Plan states that

the City is reaching a housing affordability crisis. Current regulations require only that a developer provide an affordable housing set-aside of 10% in buildings containing 10 or more units, where the applicant seeks a D variance or as part of a Redevelopment Plan.

[(Exh. F (emphases added).)]

95. The 2018 Master Plan recommends that the City adopt an "Affordable Housing Zone overlay" that "would encourage future revitalization of [certain] properties by allowing for them to be reconstructed at greater heights and densities, subject to satisfaction of a minimum 20% set-aside for permanently affordable units." (Exh. F.)

96. The 2018 Reexamination Report states that "Hoboken passed an ordinance in 2012 which generally requires a 10 percent affordable housing set-aside for residential construction of more than 10 units." (Exh. E.)

97. The 2018 Reexamination Report states that "all redevelopment plans approved since 2009, including Hoboken Yard, Neumann Leathers, and Western Edge, require that at least 10 percent of new residential units be set aside as affordable units." (Exh. E (emphases added).)

98. At the conclusion of the April 7 hearing, the Planning Board voted to adjourn the determination on whether the proposed amendments were consistent with the 2018 Master Plan until April 14. They asked Mr. Williams to "drill down a little more on

the issues that were raised.” (Exh. L.)

- I. On April 14, 2020, the Planning Board Conducted a Second Consistency Review Hearing on the Proposed Amendments to the Western Edge Redevelopment Plan That Again Raised Concerns About the Exemption of 150 Units from the 10% Affordable Housing Requirement, Was Again Given Inaccurate Information, and Based on That Inaccurate Information and an “Outdated” Housing Element Voted 6-2 to Find the Proposed Amendments Consistent But Recommended That the City Council Achieve the Greatest Affordable Housing Possible.

99. On April 14, 2020, the Planning Board conducted a second consistency review hearing on the proposed amendments to the Western Edge Redevelopment Plan. (A true and correct copy of the transcript from the Planning Board’s April 14, 2020 hearing is attached hereto as **Exhibit M.**)

100. As part of the agenda packet for the April 14 hearing was an addendum from Mr. Williams on whether the section of the proposed amendments “pertaining to affordable housing [are] consistent with the Master Plan.” (A true and correct copy of the B-255 addendum is attached hereto as **Exhibit N.**)

101. The memo contains inaccurate information that was not corrected at the hearing.

102. The memo states that the 2018 Master Plan does not “provide specific recommendations for the quantification of affordable housing requirements.” (Exh. N.)

103. The 2018 Master Plan states that

the City is reaching a housing affordability crisis. Current regulations require only that a developer provide an affordable housing set-



aside of 10% in buildings containing 10 or more units, where the applicant seeks a D variance or as part of a Redevelopment Plan.

[(Exh. F (emphases added).)]

104. The 2018 Master Plan recommends that the City adopt an "Affordable Housing Zone overlay" that "would encourage future revitalization of [certain] properties by allowing for them to be reconstructed at greater heights and densities, subject to satisfaction of a minimum 20% set-aside for permanently affordable units." (Exh. F.)

105. The 2018 Reexamination Report states that "Hoboken passed an ordinance in 2012 which generally requires a 10 percent affordable housing set-aside for residential construction of more than 10 units." (Exh. E.)

106. The 2018 Reexamination Report states that "all redevelopment plans approved since 2009, including Hoboken Yard, Neumann Leathers, and Western Edge, require that at least 10 percent of new residential units be set aside as affordable units." (Exh. E (emphases added).)

107. At the April 14 hearing, Mr. Williams stated that he was unable to conduct a complete review for the Planning Board because

[a] lot of the specificity that this Board was looking for on April 7th, in my opinion, would be bound if the City of Hoboken had an updated housing element. The housing element, as this Board knows, is not necessarily required by the Municipal Land Use Law, but it's one of

the primary elements of a master plan, and it gives way to opportunity for tax credits, doing things like the overlay district, et cetera, and the trust fund. So not having the updated housing element, meaning it's missing in the master plan, in my opinion, what would traditionally be found in the housing element was a lot more specificity, including some of the percentages of how we comport or comply with state statutes, the Fair Housing Act, et cetera, but that is not available. . . .

. . . .

A bit more background: Hoboken has a housing element, but I would argue it is very outdated, and so it doesn't give -- the housing element does not provide the kind of contemporary information that would be of any value to this discussion, and that is why the Land Use Element in 2018 recommends updating the housing element of the master plan.

[(Exh. M.)]

108. Board Chair Frank Magaletta stated:

So on the master plan there is one, two, three, four, five, six instances where it talks about affordable housing and making it, you know, having it available for people.

In the Land Use Element not as many instances, but if you are taking about the purpose and intent of the master plan, the purpose and intent of the master plan is to provide more affordable housing, where possible. . . .

. . . .

What I am saying in my viewpoint is that the master plan and the Land Use Element seek to protect affordable housing, to make sure that we have it as much as possible because of, as I said last week, the changing demographics, and I don't know what is going to happen now with the recession, the looming

recession or maybe even the depression that is going to happen, so I don't know. I can't predict the future, and no one can. But my point is I am not persuaded that the purpose and intent of the master plan and Reexamination and the Land Use Element would be satisfied if we say, yeah, take the 150 units out, exempt it from the affordable housing, the 10 percent requirement, and redevelopment plans have.

[(Exh. M.)]

109. Board Commissioner Joanne Allman stated:

I went to back to . . . original memo, and to me, . . . it was pretty clear that she was saying that the 10 percent requirement does not apply to the additional bonus units. And I guess when I read that, and after recently reading the master plan, et cetera, it just struck me as not really meeting the intent of the master plan . . . .

[(Exh. M.)]

110. Board Commissioner Lea Cloud stated:

I have to say I spent a lot of time looking back at the master plan, looking at the redevelopment, the original Western Redevelopment Plan, and I agree with Frank that the intent is to maximize the affordable housing in town.

Yes, I completely understand that it is not specifically spelled out item by item in the master plan or the land use, but my reading of it is that the overall intent is that it is not -- you can mix and match it where you want to have it, which is what it feels like this plan is trying to do, and that the base plan requires it, but any additional FAR, it's not required.

That seems sort of like wanting to have your cake and eat it, too, where as it feels like really the intent of the master plan is

that if we are going to state that we want affordable housing, we want it consistently across, so I guess that is where I stand.

[(Exh. M.)]

111. Again, in response to a question from a fellow Commissioner, Board Commissioner James Doyle stated that "-- there is not even a 10 percent. There is a 10 percent ordinance in very limited circumstances when zoning variances are granted for a building with 10 units or more, so -- so that is why it is somewhat aspirational when we do -- the Council has put into redevelopment plans the 10 percent, which actually doesn't exist out there in the non redevelopment context. So in many ways the redevelopment plans are better than our current law in the city, because there is no affordable housing requirement in the city." (Exh. M.)

112. Mr. Doyle's statement was inaccurate and was not corrected.

113. Hoboken's inclusionary zoning ordinance generally requires a 10% set-aside of affordable housing in, among other instances, "all development . . . for approval in conjunction with a redevelopment plan adopted pursuant to the Local Redevelopment and Housing Law that includes residential uses." (Exhs. A & B.)

114. Hoboken's inclusionary zoning ordinance specifically states that its requirements shall apply to "[d]evelopment under an adopted redevelopment plan" when that redevelopment plan is "amended subsequently to increase the density or floor area ratio."

(Exhs. A & B.)

115. At the end of the April 14 hearing, the Planning Board voted, 6-2, to find the proposed amendment to Western Edge Redevelopment Plan consistent with the 2018 Master Plan. (Exh. M.)

116. In so doing, the Planning Board chose to note for the City Council "its desire to achieve the greatest affordable housing supply possible via the Redevelopment Agreement negotiations." (Exh. M.)

**J. On April 15, 2020, the Hoboken City Council Adopted, By a Vote of 7-2, the Proposed Amendments to the Western Edge Redevelopment Plan Despite Concerns About a Lack of Transparency and Without Any Discussion of the Changes to the Affordable Housing Requirement.**

117. On April 15, 2020, the City Council considered Ordinance No. B-255, "Ordinance Amending the Redevelopment Plan for the Western Edge Redevelopment Area Pertaining to the Jefferson Street Sub-Area," on second and final reading. (A true and correct copy of the ordinance included in the April 15, 2020 "agenda packet" is attached hereto as **Exhibit O.**)

118. The findings in Ordinance No. B-255 do not state anything about changes to the 10% affordable housing requirement in the Western Edge Redevelopment Plan. (Exh. O.)

119. The ordinance does not address any of the concerns expressed by the Planning Board about the change to the affordable housing requirement. (Exh. O.)

120. The ordinance does not address the divergence from

the inclusionary zoning ordinance. (Exh. O.)

121. The Council did not hear from a single member of the public during the portion of the meeting focused specifically on the proposed amendments to the Western Edge Redevelopment Plan.

122. Councilwoman Tiffanie Fisher stated that she "struggled with the fact that the City Council" was "voting on this right now."

123. Councilwoman Fisher is Chair of Hoboken's Community Development North and Parking & Transportation Committees.

124. Councilwoman Fisher is a member of Hoboken's Revenue and Finance & Infrastructure Committee.

125. Councilwoman Fisher stated that the City had "no specifics on the project" and the "parameters were not defined."

126. Councilwoman Fisher stated that the City was "upsizing a plan" and the City was "putting out a plan while no one is watching."

127. Councilwoman Fisher stated there should be "a process" and that the City was doing it so it "could say we are working on a pool" even though "there's no plan for a pool."

128. Councilwoman Fisher stated there should be a "public meeting where people could ask questions" and so the City could be "more transparent."

129. Councilwoman Fisher stated her subcommittee considered the proposed amendments and the five additional stories

on the hotel were included in the proposed amendments without "any economic analysis, no impact study, no nothing."

130. Councilwoman Fisher moved to table consideration of the proposed amendments, but the vote on the motion to table failed 5-4.

131. Councilman James Doyle, who is also a member of the Planning Board, stated that he "felt somewhat obligated to report out on the Planning Board."

132. Councilman Doyle stated that "the issue that was very troubling . . . was the issue of the inclusion in the amendments of . . . that the 10% requirement of affordable housing would be exempt."

133. Councilman Doyle stated that "the Planning Board was very concerned and dedicated a fair amount of discussion to the inappropriateness of that exclusion."

134. There was no subsequent discussion by the City Council of the change to the affordable housing requirement.

135. There was no subsequent discussion by the City Council of the Planning Board's concerns with the change to the affordable housing requirement.

136. No councilperson other than Councilman Doyle spoke the words "affordable housing" during the portion of the April 15 meeting focused specifically on the proposed amendments to the Western Edge Redevelopment Plan.

137. There was no discussion by the City Council about how the change to the affordable housing requirement relates to the City's inclusionary zoning ordinance.

138. There was no discussion by the City Council about how the change to the affordable housing requirement relates to the City's 2018 Master Plan.

139. There was no discussion by the City Council about the rationale for exempting up to 150 residential units from the affordable housing requirement.

140. On April 20, 2020, a public notice of adoption was published in the Jersey Journal regarding "Ordinance Amending the Redevelopment Plan for the Western Edge Redevelopment Area Pertaining to the Jefferson Street Sub-Area (B-255)." (A true and correct copy of the April 20, 2020 public notice is attached hereto as **Exhibit P.**)

**K. Hoboken Has a Pending Mount Laurel Declaratory Judgment Action That Will Eventually Determine the Size of the City's Present Need Obligation. The City's Unsatisfied Present Need Obligation Is Likely Hundreds of Units.**

141. On July 5, 2019, the City of Hoboken filed a Mount Laurel declaratory judgment complaint that sought a declaration that the City is in "full compliance with its constitutional affordable housing obligations." See IMO the Application of the City of Hoboken, Docket No. HUD-L-2664-15. (A true and correct copy of the City of Hoboken's July 5, 2019 Complaint is attached hereto as **Exhibit Q.**)



142. The City alleged that it has a Third Round Present Need obligation of 419 units. (Exh. Q.)

143. The City alleged that it had 701 units which qualify for affordable housing credits. (Exh. Q.)

144. The vast majority of units that Hoboken was seeking credit for allegedly "came online" in the 1980s. (Exh. Q.)

145. Under the Council on Affordable Housing's (COAH) applicable rules, affordable housing units that came online in the 1980s cannot be credited toward Hoboken's Third Round Present Need obligation.

146. Hoboken and FSHC are currently engaged in ongoing mediation in the Mount Laurel declaratory judgment action.

147. The City's unsatisfied Present Need obligation is likely hundreds of units.

148. New affordable housing units such as those that could be built in the Western Edge Redevelopment Area could help address Hoboken's unsatisfied Present Need obligation.

**FIRST COUNT**  
**Arbitrary, Capricious, or Unreasonable and Contrary to the Public**  
**Interest (City Council)**

149. Plaintiff repeats and incorporates each of the foregoing paragraphs of this Complaint for purposes of this count as if set forth at length herein.

150. The April 15, 2020 action of the Hoboken City Council adopting Ordinance No. B-255 approving the amendments to

the Western Edge Redevelopment Plan is arbitrary, capricious, or unreasonable and contrary to the public interest.

151. The City Council offered no rationale for exempting up to 150 additional residential units from the 10% affordable housing set-aside requirement.

152. The City Council offered no rationale for ignoring the Planning Board's recommendation that the City achieve the greatest affordable housing supply possible.

153. Adequate reason for the adoption of the amendments was not established and not set forth on the record.

154. The City Council's reliance on the Planning Board's finding of consistency was unreasonable because the Planning Board relied upon clearly inaccurate factual and legal information in reaching its determination.

155. The amendments are contrary to the City's 2018 Master Plan, which states that "the City is reaching a housing affordability crisis" and that redevelopers must "provide an affordable housing set-aside of 10% in buildings . . . part of a Redevelopment Plan."

156. The amendments are contrary to the City's inclusionary zoning ordinance, which requires a 10% affordable housing set-aside when redevelopment plans are amended to increase density or floor ratio.

157. The amendments are contrary to public policy because

they will deprive lower-income households of the affordable housing that the City has repeatedly and publicly recognized is desperately needed.

158. As Councilwoman Tiffanie Fisher stated on the record on April 15, 2020: the City was "upsizing a plan" and the City was "putting out a plan while no one is watching" with "no specifics on the project" and the "parameters were not defined," and proposed amendments were included without "any economic analysis, no impact study, no nothing."

159. No one contested Councilwoman Fisher's statements.

**WHEREFORE**, FSHC demands judgment as follows: (a) finding that the adoption of Ordinance No. B-255 and the amendments to the Western Edge Redevelopment Plan were ultra vires and otherwise arbitrary, capricious, or unreasonable and contrary to public policy; (b) declaring Ordinance No. B-255 and the amendments to the Western Edge Redevelopment Plan invalid, illegal, null, void, and without effect; and (c) awarding attorneys' fees, costs of suit and such other and further equitable relief as may be just and proper.

#### **SECOND COUNT**

#### **Arbitrary, Capricious, or Unreasonable and Contrary to the Public Interest (Planning Board)**

160. Plaintiff repeats and incorporates each of the foregoing paragraphs of this Complaint for purposes of this count as if set forth at length herein.

161. The April 14, 2020 action of the Hoboken Planning Board approving a resolution finding Ordinance No. B-255 and the amendments to the Western Edge Redevelopment Plan consistent with the Master Plan is arbitrary, capricious, or unreasonable and contrary to the public interest.

162. The Planning Board relied upon clearly inaccurate factual findings and legal conclusions.

163. The Planning Board's Planner prepared a review memo for the Board and made statements that are contradicted by the plain language of the 2018 Master Plan.

164. Board Commissioners made legal claims about the City's affordable housing requirements that are contradicted by the plain language of the City's inclusionary zoning ordinance.

165. The inaccurate factual and legal information provided to the members of the Planning Board, often in response to their questions, was not corrected.

166. The Planning Board's deliberations and findings demonstrate that its decision was based upon or substantially influenced by information that was incorrect and/or incomplete.

167. The Planning Board was not informed that the amendments are contrary to the City's inclusionary zoning ordinance, which requires a 10% affordable housing set-aside when redevelopment plans are amended to increase density or floor ratio.

168. The Planning Board was not informed that the City's 2018 Master Plan states that redevelopers must "provide an affordable housing set-aside of 10% in buildings . . . part of a Redevelopment Plan."

169. The Planning Board's Planner testified that it was not possible to conduct the consistency review with the specificity

required because the City's housing element is "outdated" and "does not provide the kind of contemporary information that would be of any value."

170. No one contested the Planner's statements.

**WHEREFORE**, FSHC demands judgment as follows: (a) finding that the Planning Board's resolution determining Ordinance No. B-255 and the amendments to the Western Edge Redevelopment Plan to be consistent with the Master Plan ultra vires and otherwise arbitrary, capricious, or unreasonable and contrary to public policy; (b) declaring Ordinance No. B-255 and the amendments to the Western Edge Redevelopment Plan invalid, illegal, null, void, and without effect; and (c) awarding attorneys' fees, costs of suit and such other and further equitable relief as may be just and proper.

### **THIRD COUNT**

#### **Failure to Make Comprehensive Findings (City Council)**

171. Plaintiff repeats and incorporates each of the foregoing paragraphs of this Complaint for purposes of this count as if set forth at length herein.

172. The April 15, 2020 action of the Hoboken City Council adopting Ordinance No. B-255 approving the amendments to the Western Edge Redevelopment Plan failed to make any requisite or comprehensive findings of fact on the record supporting exempting up to 150 additional residential units from the 10% affordable housing set-aside requirement.

173. The failure of the City Council to make specific or adequate findings causes the decision to be defective and invalid.

174. The failure of the City Council to make specific or adequate findings is especially fatal because the amendments are contrary to the 2018 Master Plan.

175. The Ordinance does not reflect the discussions which took place before the Planning Board and which were brought to the City Council's attention regarding the inconsistency of exempting the additional 150 residential units from the 10% affordable housing set-aside requirement.

176. The City Council failed to offer any explanation for its deviation from the City's inclusionary zoning ordinance, which requires a 10% affordable housing set-aside when redevelopment plans are amended to increase density or floor ratio.

177. Accordingly, the Ordinance is necessarily void.

**WHEREFORE**, FSHC demands judgment as follows: (a) finding that the adoption of Ordinance No. B-255 and the amendments to the Western Edge Redevelopment Plan were ultra vires and otherwise arbitrary, capricious, or unreasonable and contrary to public policy; (b) declaring Ordinance No. B-255 and the amendments to the Western Edge Redevelopment Plan invalid, illegal, null, void, and without effect; and (c) awarding attorneys' fees, costs of suit and such other and further equitable relief as may be just and proper.

**FOURTH COUNT**  
**Mount Laurel Doctrine**

178. Plaintiff repeats and incorporates each of the foregoing paragraphs of this Complaint for purposes of this count as if set forth at length herein.

179. The City of Hoboken has a pending Mount Laurel declaratory judgment action by which it is seeking a judgment finding that it is in compliance with its constitutional obligations.

180. The City of Hoboken has an unsatisfied Third Round

Present Need obligation of likely hundreds of units.

181. The City of Hoboken's inclusionary zoning ordinance states that it required a 10% set-aside of affordable housing because "the City of Hoboken recognizes the Constitutional requirement of every New Jersey municipality to provide an opportunity for the construction and rehabilitation of low and moderate income housing."

182. Because the construction of new affordable housing units can be used to satisfy Hoboken's Present Need obligation, the City should not have exempted the additional 150 units in the Western Edge Redevelopment Plan from the extant 10% affordable housing set-aside requirement without Court approval.

183. Because the City of Hoboken has thus far failed to satisfy its Third Round Present Need obligation, its adoption of Ordinance No. B-255 was contrary to its constitutional obligations and the constitutional rights and interests of lower-income households.

**WHEREFORE**, FSHC demands judgment as follows: (a) finding that Hoboken is not in compliance with Mount Laurel; (b) mandating that Hoboken comply with Mount Laurel; (c) finding that the adoption of Ordinance No. B-255 and the amendments to the Western Edge Redevelopment Plan were unconstitutional, invalid, and unlawful; (d) declaring Ordinance No. B-255 and the amendments to the Western Edge Redevelopment Plan invalid, illegal, null, void, and without effect; and (e) awarding attorneys' fees, costs of suit and such other and further equitable relief as may be just and proper.

**FIFTH COUNT**  
**New Jersey Civil Rights Act**

184. Plaintiff repeats and incorporates each of the

foregoing paragraphs of this Complaint for purposes of this count as if set forth at length herein.

185. The New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq., protects the citizens of New Jersey from being deprived of their state and federal constitutional and statutory civil rights.

186. The New Jersey Supreme Court has held in the Mount Laurel I and Mount Laurel II decisions, and the Legislature has implemented through the Fair Housing Act, that the New Jersey Constitution guarantees lower-income households the right to the provision of a realistic opportunity for affordable housing in every municipality in the State of New Jersey.

187. Because the City of Hoboken has an unsatisfied Third Round Present Need obligation of likely hundreds of units and because the construction of new affordable housing units can be used to satisfy Hoboken's Present Need obligation, the City should not have exempted the additional 150 units in the Western Edge Redevelopment Plan from the extant 10% affordable housing set-aside requirement without Court approval.

188. The City has violated the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq., by depriving lower-income households of their substantive constitutional and statutory right to provision of decent and affordable housing.

**WHEREFORE**, FSHC demands judgment as follows: (a) finding that Hoboken has violated the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq.; (b) finding that Hoboken has violated the statutory and constitutional rights of lower-income households; and



(c) requiring Hoboken to pay appropriate civil penalties to the State of New Jersey and attorneys' fees to FSHC.

FAIR SHARE HOUSING CENTER  
Attorneys for Plaintiff

Dated: June 1, 2020

  
Bassam F. Gergi, Esq.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Bassam F. Gergi, Esq., is hereby designated as trial counsel on behalf of plaintiff Fair Share Housing Center.


Dated: June 1, 2020

  
Bassam F. Gergi, Esq.

**Rule 4:5-1 CERTIFICATION**

Pursuant to Rule 4:5-1, I hereby certify that, to the best of my knowledge, information and belief, the subject matter of the within controversy does not form the basis of any other action presently pending in any court or arbitration proceeding, with the exception of IMO the Application of the City of Hoboken, Docket No. HUD-L-2664-15. Also, to the best of my knowledge, information and belief, no other action or arbitration proceeding is contemplated at this time, and I know of no other party who should be joined in this action.

Dated: June 1, 2020

  
Bassam F. Gergi, Esq.



Peter J. O'Connor, Esq.  
Adam M. Gordon, Esq.  
Laura Smith-Denker, Esq.  
David T. Rammner, Esq.  
Joshua D. Bauers, Esq.  
Bassam F. Gergi, Esq.

June 1, 2020

**Via eCourts and Mail**

Clerk, Hudson County  
Superior Court of New Jersey  
William J. Brennan Courthouse, 2<sup>nd</sup> Floor  
583 Newark Avenue  
Jersey City, NJ 07306

**Re: Fair Share Housing Center v. The City of Hoboken, the City of  
Hoboken Planning Board, and Just Block 112, LLC,  
Docket No. HUD-L-\_\_\_\_\_**

Dear Madam/Sir:

Enclosed for filing please find Fair Share Housing Center's Complaint in Lieu of Prerogative Writs in the above-captioned matter. Please note that, as set forth in the attached order from the New Jersey Supreme Court, filing fees in this matter are waived.

Thank you for your attention to this matter.

Respectfully,

*Bassam Gergi*  
Bassam F. Gergi, Esq.

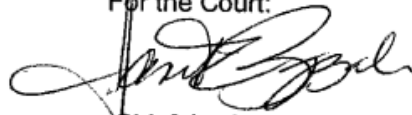
Counsel for Fair Share Housing Center

c: Wendy Rubinstein, Esq.  
Jason M. Hyndman, Esq.  
Christine A. Nazzaro-Cofone, P.P., A.I.C.P.

**SUPREME COURT OF NEW JERSEY**

Pursuant to Rule 1:13-2(a), it is ORDERED that the payment of filing fees, other fees, and charges of public officers for service of process in connection with actions filed by the Fair Share Housing Center shall be waived; this Order is effective immediately and until further order of the Court.

For the Court:



Chief Justice

Dated: January 16, 2007

**Fair Share Housing Center**

510 Park Boulevard

Cherry Hill, New Jersey 08002

P: 856-665-5444

F: 856-663-8182

Attorneys for Fair Share Housing Center

By: Bassam F. Gergi, Esq. (302842019)

bassamgergi@fairsharehousing.org

**Fair Share Housing Center, Inc.,**

**Plaintiff,**

**v.**

**The City of Hoboken, the City of  
Hoboken Planning Board, and Just  
Block 112, LLC,**

**Defendants.**

Superior Court of New Jersey  
Law Division, Hudson County

Docket No. HUD-L-\_\_\_\_\_

**Civil Action**

**Certification of Transcripts  
Pursuant to Rule 4:69-4**

1. I, Bassam F. Gergi, Esq., am an attorney in the State of New Jersey and a Staff Attorney at Fair Share Housing Center (FSHC). I certify as follows.

2. This certification is submitted together with Plaintiff FSHC's Complaint in Lieu of Prerogative Writs and concerns the ordering of all necessary transcripts related to this matter.

3. Pursuant to Rule 4:69-4, I contacted the City of Hoboken, on May 19, 2020, in order to obtain copies of all minutes, transcripts, and summaries of the Hoboken City Council's April 15, 2020 meeting when it considered and adopted Ordinance No. B-255 and the amendments to the Western Edge Redevelopment Plan. Attached as

**Exhibit A** to this certification is a true and correct copy of the Open Public Records Act and common law right-of-access request I submitted to the City of Hoboken.

4. As of June 1, 2020, the City of Hoboken has not provided any documents in response to my May 19, 2020 request.


I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements by me are willfully false, I am subject to punishment.

Dated: June 1, 2020

  
Bassam F. Gergi, Esq.  
FAIR SHARE HOUSING CENTER

## **Exhibit A**

BG

**From:** Bassam Gergi bassamgergi@fairsharehousing.org   
**Subject:** May 19, 2020 OPRA/Common Law Request from Fair Share Housing Center  
**Date:** May 19, 2020 at 1:50 PM  
**To:** cityclerk@hobokennj.gov, opra@hobokennj.gov

---

Dear City of Hoboken:

Please see attached an OPRA/common law right-of-access request from Fair Share Housing Center. Please let me know if you have any questions. I can be reached at (973) 979-2954.

Thank you,  
Bassam Gergi



May 19, 2020  
OPRA/...en.pdf

--  
Bassam F. Gergi, Esq.  
Fair Share Housing Center  
510 Park Boulevard  
Cherry Hill, New Jersey 08002  
P: 856-665-5444  
F: 856-663-8182  
bassamgergi@fairsharehousing.org



Peter J. O'Connor, Esq.  
 Adam M. Gordon, Esq.  
 Laura Smith-Denker, Esq.  
 David T. Rammler, Esq.  
 Joshua D. Bauers, Esq.  
 Bassam F. Gergi, Esq.

May 19, 2020

**Via Mail and Email**

City of Hoboken  
 Attn: Custodian of Records  
 94 Washington Street  
 Hoboken, New Jersey 07030  
 OPRA@hobokennj.gov

**Re: FSHC's Open Public Records Act and Common Law Request of May 19, 2020**

Dear City of Hoboken:

Pursuant to New Jersey's Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, as well as the State's common law right of access, see Mason v. City of Hoboken, 196 N.J. 51, 67 (2008), please accept this request for the specific identifiable records described herein.

I ask that you please produce these records immediately. If possible, please email a copy of the records to my email address at [bassamgergi@fairsharehousing.org](mailto:bassamgergi@fairsharehousing.org). I can be contacted at any time at 973-979-2954.

Under the common law, my interest in the records requested is as follows:

I, Bassam F. Gergi, Esq., am a citizen of New Jersey and an attorney at Fair Share Housing Center, which is located in New Jersey. I submit this request on behalf of Fair Share Housing Center, which is an affordable housing advocate that is dedicated to protecting the housing rights of New Jersey's lower-income citizens, including those citizens who live and work, and seek to live and work, in the City of Hoboken.

I am requesting the following records:


- 1) Any minutes, summaries, transcripts, audio recordings, and/or video recordings of the April 15, 2020 Hoboken City Council Meeting.
- 2) Any ordinances and/or resolutions amending the Redevelopment Plan for the Western Edge Redevelopment Area approved by the Hoboken City Council on April 15, 2020 or in the month thereafter.
- 3) Any resolutions from the Planning Board of the City of Hoboken issued on April 14, 2020 or in the month thereafter that relate to proposed amendments to the Redevelopment Plan for the Western Edge Redevelopment Area.



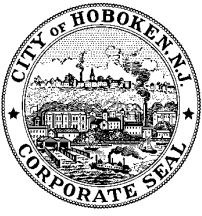
May 19, 2020  
Page 2

If you have any questions, please let me know. Thank you for your prompt attention to this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Bassam Gergi". The signature is written in a cursive style with a large, stylized 'B' and 'G'.

Bassam F. Gergi, Esq.  
Counsel for Fair Share Housing Center



**City of Hoboken**  
Custodian of Records  
**GOVERNMENT RECORDS REQUEST FORM**

94 Washington Street  
Hoboken, NJ 07030

Phone: 201-420-2000 EXT. 2005

Email: [OPRA@hobokennj.gov](mailto:OPRA@hobokennj.gov) Website: [www.hobokennj.gov](http://www.hobokennj.gov)



**IMPORTANT NOTICE**

The LAST PAGE of this form contains important information related to your rights concerning government records. Please read it carefully.

**Requester Information - PLEASE PRINT**

First Name Bassam Last Name Gergi  
E-mail Address bassamgergi@fairsharehousing.org  
Mailing Address 510 Park Boulevard  
City Cherry Hill State NJ Zip 08002  
Telephone 973-979-2954 FAX 856-663-5444

**Requested Delivery\*:** Pick up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ Email ☒

Special Requests Regarding Delivery Format: \_\_\_\_\_

*\*All requests will be via hard copy mail delivery unless otherwise specified.*

**If you are requesting records containing personal information, please select one:** Under penalty of perjury and N.J.S.A. 2C:28-3, I certify that I ☐ **HAVE** / ☐ **HAVE NOT** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature *Bassam Gergi* Printed Name Bassam Gergi Date: May 19, 2020

**If you are a crime victim** and you hereby certify under penalty of perjury and N.J.S.A. 2C:28-3 that you are requesting records herein relating to your victimization please check the box and sign and date below:

☐ Signature \_\_\_\_\_ Printed Name \_\_\_\_\_ Date: \_\_\_\_\_

**Maximum Authorized Cost**

\$ 20

**Select Payment Method**

Cash ☐ Check ☒ Money Order ☐

**Fees:**

\$0.05 per letter page

\$0.07 per legal page or larger

Actual Costs will be charged for alternative methods of delivery

**Delivery:** Additional

delivery/postage fees will apply, where applicable, depending upon delivery type.

**Extras:** Special service charge fees will apply dependent upon request

**Record Request Information:** Please be as specific as possible in describing the records being requested. **ALSO, PLEASE NOTE THAT YOUR PREFERRED METHOD OF DELIVERY WILL ONLY BE ACCOMMODATED IF THE CUSTODIAN HAS THE TECHNOLOGICAL MEANS AND THE INTEGRITY OF THE RECORDS WILL NOT BE JEOPARDIZED BY SUCH METHOD OF DELIVERY. (BOLD ITEMS ARE, GENERALLY, IMMEDIATE ACCESS DOCUMENTS.)**

**LIST THE NAME OF THE DEPARTMENT, SPECIFY DOCUMENTS REQUESTING WITH TIME FRAME**

☐ Budget: \_\_\_\_\_

☐ Bills/Invoices/Vouchers: \_\_\_\_\_

☐ Contracts: \_\_\_\_\_

☐ Employee Salary/Overtime Information: \_\_\_\_\_

☐ Ordinance/Resolution: \_\_\_\_\_

☐ Police Records: \_\_\_\_\_

☒ Other: See May 19, 2020 Letter Attached

**CUSTODIAN USE ONLY**

**Disposition Notes:** (requests for additional time/deposits / additional fees):

**CUSTODIAN USE ONLY**

**Date Opened:**

**Date Due:**

**Date Complete:**

**Date Released:**

**CUSTODIAN USE ONLY**

**Tracking Information**

Tracking # \_\_\_\_\_

Rec'd Date \_\_\_\_\_

Ready Date \_\_\_\_\_

Total Pages \_\_\_\_\_

**Final Cost /Disposition**

Total \_\_\_\_\_

Deposit \_\_\_\_\_

Balance Due \_\_\_\_\_

Balance Paid \_\_\_\_\_

Fees Waived By \_\_\_\_\_

**Records Provided**

\_\_\_\_\_  
**Custodian Signature**

\_\_\_\_\_  
**Date**

**DEPOSITS**

The custodian may require a deposit against costs for reproducing documents sought through an anonymous request whenever the custodian anticipates that the information thus requested will cost in excess of \$5 to reproduce. Where a special service charge is warranted under OPRA, that amount will be communicated to you as required under the statute. You have the opportunity to review and object to the charge prior to it being incurred. If, however, you approve of the fact and amount of the special service charge, you may be required to pay a deposit or pay in full prior to reproduction of the documents.

☐ **YOUR REQUEST FOR RECORDS IS DENIED FOR THE FOLLOWING REASON(S):**

(To be completed by the Custodian of Records- Check the box of the numbered exemption(s) as they apply to the records requested. If multiple records are requested, be specific as to which exemption(s) apply to each record. **Response is due to requestor as soon as possible, but no later than seven business days, except for immediate access documents as provided for above.)**

☐ **N.J.S.A. 47:1A-1.1**

- ☐ ☐ Inter-agency or intra-agency advisory, consultative or deliberative material
- ☐ ☐ Law enforcement records: Medical examiner photos; Criminal investigatory records (however, N.J.S.A. 47:1A-3.b. lists specific criminal investigatory information which must be disclosed); Victim's records
- ☐ ☐ Trade secrets and proprietary commercial or financial information
- ☐ ☐ Any record within the attorney-client privilege
- ☐ ☐ Administrative or technical information regarding computer hardware, software and networks which, if disclosed would jeopardize computer security
- ☐ ☐ Emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein
- ☐ ☐ Security measures and surveillance techniques which, if disclosed, would create a risk to the safety or persons, property, electronic data or software
- ☐ ☐ Information which, if disclosed, would give an advantage to competitors or bidders
- ☐ ☐ Information generated by or on behalf of public employers or public employees in connection with: Any sexual harassment complaint filed with a public employer; Any grievance filed by or against an employee; Collective negotiations documents and statements of strategy or negotiating
- ☐ ☐ Information that is a communication between a public agency and its insurance carrier, administrative service organization or risk management office
- ☐ ☐ Information that is to be kept confidential pursuant to court order
- ☐ ☐ Certificate of honorable discharge issued by the United States government (Form DD-214) filed with a public agency
- ☐ ☐ Social security numbers
- ☐ ☐ Credit card numbers
- ☐ ☐ Unlisted telephone numbers
- ☐ ☐ Drivers' license numbers
- ☐ ☐ Biotechnology trade secrets **N.J.S.A. 47:1A-1.2**
- ☐ ☐ Convicts requesting their victims' records **N.J.S.A. 47:1A-2.2**
- ☐ ☐ Ongoing investigations of non-law enforcement agencies (disclosure is inimical public interest) **N.J.S.A. 47:1A-3.a**
- ☐ ☐ Public Defender records **N.J.S.A. 47:1A-5.k**
- ☐ ☐ Upholds exemptions contained in other State or federal statutes and regulations, Executive Orders, Rules of Court, and Privileges created by State Constitution, statute, court rule or judicial case law **N.J.S.A. 47:1A-9**
- ☐ ☐ Personnel and pension records, **EXCEPT** specific information identified as follows:
  - An individual's name, title, position, salary, payroll record, length of service, date of separation and the reason for such separation, and the amount and type of any pension received
  - When required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the US, or when authorized by an individual in interest
  - Data contained in information which disclose conformity with specific experiential educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information **N.J.S.A. 47:1A-10**

☐ **N.J.S.A. 47:1A-1**

- † "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy"

Burnett v. County of Bergen, 198 N.J. 408 (2009). Specifically, it imposes an obligation on public agencies to protect against disclosure of personal information which would run contrary to reasonable privacy interests."

☐ **Executive Order No. 21 (McGreevey 2002)**

- ☐ Records where inspection, examination or copying would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism. Records exempted from disclosure by State agencies' proposed rules are exempt from disclosure by this Order.

☐ **Executive Order No. 26 (McGreevey 2002)**

- ☐ Resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing
- ☐ Records of complaints and investigations undertaken pursuant to the Model Procedures for Internal Complaints Alleging Discrimination, Harassment or Hostile Environments
- ☐ Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation
- ☐ Information in a personal income or other tax return
- ☐ Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed
- ☐ Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing
- ☐ Records in the possession of another department (including NJ Office of Information Technology or State Archives) when those records are made confidential by regulation or EO 9.

**Other Exemption(s) contained in a State statute, resolution of either or both House of the Legislature, regulation, Executive Order, Rules of Court, any federal law, federal regulation or federal order pursuant to N.J.S.A. 47:1A-9.a.**

**(Please provide detailed information regarding the exemption from disclosure for which you are relying to deny access to government records. If multiple records are requested, be specific as to which exemption(s) apply to each records.)**

**Other reasons for denial of OPRA request:**

**ACKNOWLEDGEMENT**

**I hereby acknowledge that the document(s) specifically requested herein *were /were not /were partially* provided. I hereby acknowledge that the Custodian of Records responded to and closed out my request on the date I sign this Acknowledgement. My signature on this Acknowledgement does not foreclose my rights to appeal the decisions of the Custodian relating to this OPRA request. I further certify under penalty of N.J.S.A. 2C:25-3, that I *have / have not* been convicted of any indictable offense under the laws of the State of New Jersey, any other state, or the federal government.**

\_\_\_\_\_  
**Requestor's Signature**

\_\_\_\_\_  
**Date**

1. In order to request access to government records under OPRA, you must complete all the required portions of and date this request form and deliver it in person during regular business hours or by mail, fax or electronically to the agency custodian of records. Your request is not considered filed until the agency custodian of records receives the request form. If you submit the request form to any other officer or employee of the **City of Hoboken**, that officer or employee may not have the authority to accept your request form on behalf of the **City of Hoboken** and your request will be directed to the agency custodian of records. The seven (7) business day response time will not commence until the agency custodian of records receives the request form.
2. The fees for duplication of a government records in printed form are listed on the front of this form are listed on the front of this form. We will notify you of any special service charges or other additional charges authorized by State law or regulation before processing your request. Payment shall be made by cash, check or money order payable to the Government Records Council.
3. If it is necessary for the records custodian to contact you concerning your request, providing identifying information, such as your name, address, telephone number, fax number or e-mail address is required. Where contact is not necessary, anonymous requests are permitted; except that anonymous requests for personal information are not honored.
4. ***You may be charged a 50% or other deposit when a request for copies exceeds \$25.*** The **City of Hoboken** custodian will contact you and advise you of any deposit requirements. Anonymous requests, when permitted, require a deposit of 100% of estimated fees. You agree to pay the balance due upon delivery of the records.
5. Under OPRA, a custodian must deny access to a person who has been convicted of an indictable offense in New Jersey, any other state, or the United States, and who is seeking government records containing personal information pertaining to the person's victim or the victim's family.
6. By law, the **City of Hoboken** must notify you that it grants or denies a request for access to government records with seven (7) business days after the agency custodian of records receives the request. If the record requested is not currently available or is in storage, the custodian will advise you within seven (7) business days after receipt of the request when the record can be made available and the estimated cost for reproduction.
7. You may be denied access to a government record if your request would substantially disrupt agency operations and the custodian is unable to reach a reasonable solution with you.
8. If the **City of Hoboken** is unable to comply with your request for access to a government record, the custodian will indicate the reasons for denial on the request form and send you a signed and dated copy.
9. Except as otherwise provided by law or by agreement with the requester, if the agency custodian of records fails to respond to you within seven (7) business days of receiving a request, the failure to respond is a deemed denial of your request.
10. If your request for access to a government record has been denied or unfilled within seven (7) business days required by law, you have the right to challenge the decision by the **City of Hoboken** to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a compliant in writing with the Government Records Council ("GRC"), You may contact the GRC by toll-free telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us), or at their web site at [www.state.nj.us/grc](http://www.state.nj.us/grc). the Council can also answer other questions about the law.
11. All Information provided on this form is subject to disclosure under the Open Public Records Act.

# Civil Case Information Statement

## Case Details: HUDSON | Civil Part Docket# L-001991-20

**Case Caption:** FAIR SHARE HOUSING C ENTER VS CITY OF HOBOKEN

**Case Initiation Date:** 06/01/2020

**Attorney Name:** BASSAM FAWAZ GERGI

**Firm Name:** FAIR SHARE HOUSING CENTER

**Address:** 510 PARK BLVD

CHERRY HILL NJ 08002

**Phone:** 8566655444

**Name of Party:** PLAINTIFF : Fair Share Housing Center

**Name of Defendant's Primary Insurance Company**  
(if known): Unknown

**Case Type:** ACTIONS IN LIEU OF PREROGATIVE WRITS

**Document Type:** Complaint

**Jury Demand:** NONE

**Is this a professional malpractice case?** NO

**Related cases pending:** YES

**If yes, list docket numbers:** Docket No. HUD-L-2664-19

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** NO

**Are sexual abuse claims alleged by: Fair Share Housing Center?**  
NO

## THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** NO

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category: Putative Class Action?** NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

06/01/2020

Dated

/s/ BASSAM FAWAZ GERGI

Signed