

**RESOLUTION NO: 2015- 254**

**RESOLUTION OF THE CITY OF VINELAND, COUNTY OF CUMBERLAND, DECLARING ITS INTENT TO FULLY COMPLY WITH ITS CURRENT AND FUTURE MOUNT LAUREL OBLIGATIONS AND TO SERVE AS THE "CATALYST FOR CHANGE" TO RENDER ANY MOUNT LAUREL LAWSUITS AS "UNNECESSARY LITIGATION"**

**WHEREAS**, in So. Burlington County N.A.A.C.P. v. Tp. of Mount Laurel, 92 N.J. 158, 279-80 (1983) ("Mount Laurel II"), the New Jersey Supreme Court ruled, subject to several other limitations, that in order for a plaintiff to be entitled to a builder's remedy, it must "succeed in litigation;" and

**WHEREAS**, in Toll Bros. Inc. v. Tp. of W. Windsor, 173 N.J. 502, 507 (2002), the Supreme Court ruled that in order for a developer to succeed in litigation, it must not only prove that the municipality failed to create a realistic opportunity to satisfy its affordable housing obligation, but also must be the "catalyst for change;" and

**WHEREAS**, on September 26, 2013, the Supreme Court released In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 215 N.J. 578 (2013) which invalidated the Round 3 regulations adopted in 2008 by the New Jersey Council on Affordable Housing ("COAH"); and

**WHEREAS**, on March 14, 2014, the Supreme Court issued an order directing COAH to propose new Round 3 regulations on or before May 1, 2014 and to adopt them by October 22, 2014; and

**WHEREAS**, the March 14, 2014 Order further provided that, if COAH failed to meet these deadlines, the Court would entertain a Motion in Aid of Litigant's Rights which could include an application for the right, on a case-by-case basis, to file a builder's remedy suit against a municipality under COAH's jurisdiction, such as the City; and

**WHEREAS**, on April 30, 2014, in accordance with the March 14, 2014 Order, COAH proposed Round 3 regulations and published them in the New Jersey Register on June 2, 2014; and

**WHEREAS**, pursuant to these proposed regulations, COAH assigned the City a fair share of 323 units, consisting of a 323 unit rehabilitation obligation, a minus 508 unit ("-508") unmet prior round obligation, and a zero unit prospective Round 3 obligation; and

**WHEREAS**, COAH accepted public comments on the proposed Round 3 regulations until August 1, 2014, and indeed received roughly 3,000 comments; and

**WHEREAS**, on October 20, 2014, the COAH board met to consider adopting the proposed regulations; and

**WHEREAS**, the COAH board reached a 3-3 deadlock and therefore did not adopt the proposed regulations; and

**WHEREAS**, COAH therefore failed to meet the Supreme Court's October 22, 2014 deadline; and

**WHEREAS**, COAH's failure to adopt the proposed regulations has left the City in a continuing state of limbo despite its unwavering commitment to constitutional compliance without the need for litigation; and

**WHEREAS**, on October 31, 2014, Fair Share Housing Center ("FSHC") filed a Motion In Aid of Litigant's Rights urging the Supreme Court, among other things, to direct trial judges -- instead of COAH -- to establish standards with which municipalities must comply; and

**WHEREAS**, FSHC's motion included an alternative fair share calculation for each municipality, which it subsequently revised pursuant to the report of its expert, David N. Kinsey, FAICP, date April 16 2015, further highlighting the uncertainty of the framework with which municipalities must ultimately comply because there are no standards with which to comply; and

**WHEREAS**, pursuant to alternative calculations furnished by FSHC in April of 2015, the City would have an obligation of 319 units consisting of a 319 unit rehabilitation obligation, a zero unit prior round obligation, and a zero unit Round 3 obligation; and

**WHEREAS**, on March 10, 2015, the Supreme Court issued a decision entitled In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), in which it (1) found that COAH had violated its March 14, 2014 Order by failing to adopt new Round 3 regulations by October 22, 2014, (2) held that, without new Round 3 regulations, COAH could not process petitions for substantive certification for the 314 municipalities currently under COAH's jurisdiction, (3) directed trial courts to assume COAH's functions, (4) authorized municipalities under COAH's jurisdiction to file a Declaratory Judgment Action along with a motion for Temporary Immunity by July 8, 2015, or risk exposure to exclusionary zoning lawsuits and (5) ruled that municipalities would have five months to prepare and file a Housing Element and Fair Share Plan with a trial court for review; and

**WHEREAS**, trial courts must now (1) calculate the "fair share" obligations for Round 3 and establish the standards with which municipalities must satisfy these obligations; and (2) process declaratory judgment actions filed by municipalities seeking approval of an affordable housing plan based upon the new judicially established standards; and

**WHEREAS**, the Supreme Court emphasized that municipalities bear no responsibility for COAH's inexcusable failure to adopt Round 3 regulations, and emphasized the desirability of municipalities complying voluntarily consistent with case law that reaches back for decades; and

**WHEREAS**, the City has received first and second round substantive certification from COAH; and

**WHEREAS**, under both COAH's proposed 2014 regulations and FSHC's 2015 numbers from its expert report, the City has no prior round or Round 3 affordable housing obligations, and only has a rehabilitation obligation; and

**WHEREAS**, the City has a rehabilitation program in place, has rehabilitated many units in the past, and will continue to do so in the future; and

**WHEREAS**, at this juncture, even though the City's Round 3 obligation is unsettled, the City is willing to accept FSHC's Round 3 number of zero; and

**WHEREAS**, under the standard that FSHC advocated before the Supreme Court, which would require a municipality to prove that it satisfied its prior round obligation and made progress towards Round 3 in order to be entitled to immunity, Vineland would be entitled to immunity because it has satisfied its prior round obligation and has made progress towards its Round 3 obligation; and

**WHEREAS**, regardless of whatever obligation is ultimately assigned, **the City remains committed to comply voluntarily with its obligations**; and

**WHEREAS**, given all that Vineland has done to house low and moderate income households and its commitment to comply with any future obligation once that obligation is determined, it would be particularly unfair for the City to suffer exposure to any additional exclusionary zoning lawsuits; and

**WHEREAS**, the Township brought itself under COAH's jurisdiction because all three branches of government preferred COAH's administrative process to resolve disputes over affordable housing matters rather than litigation (see N.J.S.A. 52:27D-303); and

**WHEREAS**, the City wishes to be in a position to complete its efforts to comply voluntarily once its obligations are defined; and

**WHEREAS**, accordingly, the City wishes to follow the path provided by the Supreme Court and by bringing a declaratory relief action and simultaneously bringing a motion for immunity so that the City can complete its efforts to comply voluntarily with whatever standards the trial judge may determine are appropriate; and

**WHEREAS**, the City herein intends to make its intentions inescapably clear to the public and all concerned.

**NOW, THEREFORE, BE IT RESOLVED** as follows:

1. The City formally stipulates that, given all the uncertainty in the law, it is entirely possible that it may not be in compliance with its affordable housing obligations once those obligations are defined.

2. The City hereby reaffirms its commitment to satisfy its affordable housing obligations, however they may ultimately be defined, voluntarily and in the absence of any Mount Laurel lawsuits.

3. The City hereby authorizes and directs its special Mount Laurel counsel in accordance with the Supreme Court opinion to file a declaratory relief action between June 8, 2015 and July 8, 2015 and to file simultaneously a motion seeking to re-affirm the City's immunity while the Court reviews the City's new Affordable Housing plan.

4. The City directs its legal and planning professionals in accordance with the Supreme Court's opinion to seek a judicial approval of its new Affordable Housing plan.

5. The City clerk is hereby directed to place this Resolution on file in City Hall until further notice to put the public and all interested parties on notice of the City's commitment to comply voluntarily and to take the actions set forth herein.

6. The City hereby authorizes its Special Mount Laurel counsel to take any and all reasonable and appropriate measures to maintain the City and Planning Board's immunity from all exclusionary zoning suits in the aforementioned declaratory relief litigation.

7. This Resolution shall take effect immediately.

Adopted:

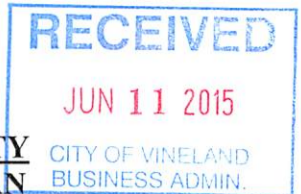
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President of Council

ATTEST:

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City Clerk



**RESOLUTION NO. 6121**

**A RESOLUTION OF THE PLANNING BOARD OF THE CITY  
OF VINELAND ADOPTING AN AMENDED HOUSING PLAN  
ELEMENT AND FAIR SHARE  
PLAN TO THE CITY OF VINELAND MASTER PLAN**

**WHEREAS**, the Planning Board of the City of Vineland, adopted the “City of Vineland Master Plan” dated May, 2008 on June 3, 2008 by way of Resolution No. 5783 of the Planning Board; and

**WHEREAS**, the May, 2008 Master Plan contained a Housing Element and Fair Share Plan as required by the Municipal Land Use Law, NJSA 40:55D-1 et seq; and

**WHEREAS**, the New Jersey Department of Community Affairs adopted new rules and regulations relating to affordable housing and entitled “Substantive Rules of the New Jersey Council on Affordable Housing” for the period beginning June 2, 2008; and

**WHEREAS**, as a result of the new rules and regulations adopted by New Jersey Department of Community Affairs, the Planning Board adopted an amended Housing Element and Fair Share plan on December 22, 2008; and

**WHEREAS**, on September 26, 2013, the New Jersey Supreme Court in its opinion, In re Adoption of NJAC 5:96 and 5:97 by New Jersey Council on Affordable Housing, 215 NJ 578 (2013), invalidated the Round 3 regulations adopted in 2008 by the New Jersey Council on Affordable Housing (COAH); and

**WHEREAS**, on March 14, 2014, the New Jersey Supreme Court issued an order directing COAH to include new Round 3 regulations on or before May 1, 2014 and to adopt said regulations no later than October 22, 2014; and

**WHEREAS**, COAH failed to adopt new regulations by the deadline set by the New Jersey Supreme Court; and

**WHEREAS**, on March 10, 2015, the New Jersey Supreme Court issued its opinion, In the Matter of the Adoption of NJAC 5:96 and 5:97 by New Jersey Council on Affordable Housing, 221 NJ 1 (2015), which provides new guidance for municipalities to comply with the constitutional requirements to provide their fair share of affordable housing; and

**WHEREAS**, in order to comply with the latest guidance from the New Jersey Supreme Court, the City of Vineland Planning Board prepared a revised Housing Element and Fair Share Plan for review by the City of Vineland Planning Board; and

**WHEREAS**, the Planning Board conducted a public hearing on June 10, 2015 to receive public input and to review the revised Housing Element and Fair Share Plan of the City’s Master Plan.

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Board of the City of Vineland hereby adopts the Housing Element and Fair Share Plan dated June 10, 2015 and the City’s Master Plan is amended to include the revised Housing Element and Fair Share Plan.

A copy of the Housing Element and Fair Share Plan dated June 10, 2015 is attached to this resolution and incorporated by reference.

The foregoing is a true copy of the Resolution decision adopted by the Planning Board of the City of Vineland at the meeting held on June 10, 2015 as reflected in the recorded minutes of said meeting.

PLANNING BOARD OF THE  
CITY OF VINELAND

ADOPTED DATE: June 10, 2015



YASMIN RICKETTS, Secretary



DAVID MANDERS, Chairperson

**ROLL CALL VOTE**

**VOTING IN FAVOR**

David Manders  
Michael Pantalone  
Stephen Plevins  
Christine Scarpa  
Gary Stanker  
Maria Perez  
Sandy Velez

**ABSTAINING**

None

**ABSENT**

John Casadia  
Angela Calakos  
Ryan Headly

**OPPOSED**

None