

FAIR HAVEN BOROUGH COUNCIL
APRIL 9, 2018

The meeting was called to order by Mayor Lucarelli at 7:00 p.m. The Flag Salute was followed by a Moment of Silent Meditation. The Sunshine Law Statement was read.

ROLL CALL

On Roll Call the following were present: Councilmembers Jaeger, Koch, Marchese, Peters Rodriguez and Sorensen. Others present: Administrator Casagrande and Mitchell Jacobs, Esq., Borough Attorney's Office.

PROCLAMATION

Mayor Lucarelli read a proclamation for Arbor Day, April 27, 2018.

WORKSHOP SESSION

Mayor Lucarelli asked for a motion with regard to the tree removal appeal for 49 Gillespie Avenue. A memo from the Borough's Forrester and back-up information was provided to the governing body. Motion to approve the appeal moved by Councilwoman Sorensen, second by Councilman Marchese with Ayes by all present.

A tree removal appeal was received for 10 Tyson Drive. A memo from the Borough's Forrester and back-up information was provided to the governing body. Motion to approve the appeal moved by Councilman Jaeger, second by Councilwoman Koch with Ayes by all present.

A request was received from Paint the Town Pink 2018 to display their banner and bows. Motion to approve the request which is the same as last year to post a banner at the entrance of Fair Haven and hang bows along the decorative light poles on River Road moved by Councilman Marchese, second by Councilwoman Sorensen with Ayes by all present.

The Foundation of Fair Haven requested permission to post the firework signs advertising Fair Haven Day as well as lawn signs. Councilwoman Sorensen said this is the same request as last year; they would like to install them beginning May 15th and take them down after the event on June 9th. Motion to approve the firework signs to be posted on the decorative lighting poles and 25 lawn signs moved by Councilman Jaeger, second by Councilman Rodriguez with Ayes by all present.

PUBLIC COMMENT ON AGENDA ITEMS

The meeting was opened to the public for comments or questions at 7:07 p.m. Susan O'Brien, River Road, asked about Ordinance No 2018-07 and if residents could grow their own marijuana. The governing body is not going to give permission for that. Attorney Jacobs said that most state laws that approve the use of marijuana and allow a person to grow a certain amount for personal use. It is up to the State of New Jersey to create the regulations for marijuana.

Councilman Rodriguez advised that New Jersey legalized fireworks for personal use. He asked that regulations be considered for the future. It would violate the current noise ordinance and it is not for all fireworks; the approval is for sparklers, worm/snake fireworks...not necessarily launched items.

Carolyn Ferguson, Colonial Court, asked about, Ordinance 2018-07. It would prohibit the sale as a Class D Variance. Attorney Jacobs explained that this matter would be subject to the Use Variance process and the applicant would have to provide proof for relief to be granted (reason for the need, location of the business, benefits). Councilman Marchese said Class C or D variance matters go before the Zoning Board.

There being no further comments or questions the meeting was closed to the public at 7:11 p.m.

APPROVAL OF MINUTES

Councilwoman Sorensen made a motion to approve the Regular Meeting minutes of March 26, 2018, second by Councilman Rodriguez.

Affirmative: Councilmembers Koch, Marchese, Peters, Rodriguez and Sorensen

Negative: None

Abstain: Councilman Jaeger

Absent: None

Councilwoman Sorensen made a motion to approve the Executive Session minutes of March 26, 2018, second by Councilman Rodriguez

Affirmative: Councilmembers Koch, Marchese, Peters, Rodriguez and Sorensen
Negative: None
Abstain: Councilman Jaeger
Absent: None

OLD BUSINESS
HEARING AND ADOPTION OF ORDINANCES

1. Ordinance No. 2018-06, Amend Street Opening Ordinance: Restoration of Surface

**AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF FAIR HAVEN
IN THE COUNTY OF MONMOUTH SUPPLEMENTING CHAPTER 15,
STREET, SIDEWALK, CURB, DRIVEWAY AND GUTTER EXCAVATION,
BY AMENDING SECTION 1.25, RESTORATION OF THE SURFACE**

On motion of Councilwoman Sorensen, second by Councilwoman Koch with Ayes by all present, Mayor Lucarelli opened the meeting for comments or questions at 7:12 p.m.

There being none, the hearing was closed to the public at 7:12 p.m. on motion of Councilwoman Sorensen, second by Councilwoman Koch with Ayes by all present.

Offered for adoption by Councilwoman Sorensen, second by Councilwoman Koch

Affirmative: Councilmembers Jaeger, Koch, Marchese, Peters, Rodriguez and Sorensen
Negative: None
Abstain: None
Absent: None

A street opening denial appeal was received for 92 Lake Avenue. Lake Avenue is under a restoration moratorium so the application was denied. With this new ordinance, this can be approved and a fee of \$150 to open will be assessed as per ordinance. Motion to approve the application with appropriate restoration coordinated with the Borough Engineer moved by Councilman Jaeger, second by Councilman Rodriguez with Ayes by all present.

A tree removal appeal was received from 33 DeNormandie Avenue. This was held until the applicant was heard by the Historic Preservation Commission with regard to building a new home on this lot. It was heard and approved. Motion to approve the appeal moved by Councilman Peters, second Councilman Marchese with Ayes by all present.

NEW BUSINESS
INTRODUCTION OF ORDINANCES

1. Ordinance No. 2018-07, Amend 30-5.3: Prohibit the Sale of Marijuana

**AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF FAIR HAVEN
IN THE COUNTY OF MONMOUTH SUPPLEMENTING THE FAIR HAVEN
BOROUGH CODE, CHAPTER 30, LAND USE DEVELOPMENT
REGULATIONS, SECTION 5.3, PERMITTED AND PROHIBITED USES.**

BE IT ORDAINED by the Council of the Borough of Fair Haven, in the County of Monmouth, in the State of New Jersey, as follows:

I.

The purpose of this Ordinance is to amend from Chapter 30, Section 5.3, Permitted and Prohibited Uses.

NOTE: The section of Chapter 30 that is to be supplemented by Ordinance is Section 5.3. All additions are shown in ***bold italics with underlines***. The deletions are shown as ~~***strikeovers in bold italics***~~. Sections of Chapter 30, Section 5.3 that will remain unchanged are shown in normal type.

II.

30-5.3 Permitted and Prohibited Uses.

- a. Permitted principal uses, accessory uses, and conditional uses within each zone district

are set forth in the schedules of permitted uses. The letter "P" means that the use is a permitted principal use in the zone. The letter "C" means the use is a permitted conditional use. The letter "A" means permitted accessory use in the zone. Any use, except for essential services, which is not specifically listed as a permitted use, an accessory use or a conditional use on the schedule of uses shall be deemed a prohibited use.

b. Prohibited uses shall include but not be limited to the following:

1. All billboards, signboards, advertising signs and devices not expressly related to the business being conducted on the premises or otherwise specifically permitted by this section.
2. Camping sites, trailer camps, trailer courts or trailer coaches used as dwellings, offices or storage facilities or commercial activities related to the outdoor storage or display of trailer coaches, except that during development construction trailers may be permitted specifically limited as to the extent of time such use and requiring the payment of an annual fee to the municipality for the granting of such license for such use.
3. Auction markets.
4. Junk yards, automobile wrecking yards or disassembly yards, or the sorting or baling of scrap metal, paper, rags, or other scrap or waste material, except for recycling operations operated by or with the approval of the Borough.
5. Privately operated dumps for the disposal of garbage, trash, refuse, junk, or other such material.
6. Adult book stores.
7. Peep shows.
8. Massage parlors as defined in Section 30-2 of this chapter.
9. Amusement arcade.
10. Explosive storage, except small arms ammunition, or by special permit, where explosives are to be used on the premises.
11. Incineration, reduction, storage or dumping of slaughterhouse refuse, rancid fats, garbage, or dead animals.
12. Slaughtering and slaughterhouses for fowl or animals.
13. Any use of any building or premises in such a manner that the health, morals, safety or general welfare of the community may be endangered.
14. Keeping or raising of pigs, sheep, horses, donkeys, mules, cattle, goats, chickens, and other such livestock, unless a waiver is obtained in accordance with the provisions of subsection 5-18.4 of these Revised General Ordinances.
15. Asphalt plants, concrete plants, asphalt batching plants, concrete batching plants, asphalt mixing plants, concrete mixing plants, asphalt manufacturing plants, concrete manufacturing plants.
16. Auto, horse or dog racetracks.
17. Keeping or raising of mink, fox or similar fur bearing animals.
18. Open air drive-in motion picture theaters.
19. Seasonal resort cottages.
20. Any use which emits excessive and objectionable amounts of dust, fumes, noise, odor, vibration, smoke, glare or waste products.
21. The use of boats or vehicles as residential dwellings.
22. Restaurants, category three, as defined in Section 30-2 of this chapter.
23. Heliports, helistops or aviation field.
- 24. Businesses selling recreational marijuana, its derivatives, accessories and/or the paraphernalia that facilitates the use of such.**

Affirmative: Councilmembers Jaeger, Koch, Marchese, Peters, Rodriguez and Sorensen
Negative: None
Abstain: None
Absent: None

2. Ordinance No. 2018-08, Amend Chapter 30-10: Inspections and Guarantees

**AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF FAIR HAVEN
IN THE COUNTY OF MONMOUTH SUPPLEMENTING THE FAIR HAVEN BOROUGH
CODE, CHAPTER 30, LAND USE DEVELOPMENT
REGULATIONS, SECTION 10 GUARANTEES AND INSPECTIONS**

BE IT ORDAINED by the Council of the Borough of Fair Haven, in the County of Monmouth, in the State of New Jersey, as follows:

I.

The purpose of this Ordinance is to amend from Chapter 30, Section 10, Guarantees and Inspections.

NOTE: The section of Chapter 30 that is to be supplemented by Ordinance is Section 10. All additions are shown in ***bold italics with underlines***. The deletions are shown as ~~***strikeovers in bold italics***~~. Sections of Chapter 30, Section 10 that will remain unchanged are shown in normal type.

II.

30-10 GUARANTEES AND INSPECTIONS.

30-10.1 Purpose.

Improvement guarantees shall be provided prior to the ~~recording~~ ***filing*** of final subdivision plats or as a condition of final site plan approval to ensure the ~~municipality~~ ***Borough*** of the proper installation and maintenance of on-site and on-tract improvements. (2002 Code § 16.40.010)

30-10.2 Performance Guarantees.

a. Before ~~the signing and recording~~ ***filing*** of final subdivision plats ~~or recording of minor subdivision deeds or as a condition of final site plan approval or as a condition to the issuance of a zoning permit~~, the applicant shall ~~have installed~~ ***furnish to the Borough a performance guarantee and maintenance guarantee to assure the installation and maintenance of certain on-tract improvements under the inspection of the Borough Engineer, all improvements required unless the applicant has posted and the Governing Body accepted, a performance guarantee providing for such installation.*** The amount of the guarantee shall be determined by the Borough Engineer, not to exceed one hundred twenty (120%) percent of the estimated cost of ***installation of only those improvements required by an approval or developers agreement, ordinance or regulation to be dedicated to a public entity constructing the improvement*** including: streets, curbs, grading, pavement, gutters, sidewalks, street lighting, ~~street shade~~ trees, surveyors monuments, water mains, ~~culverts, storm sewers,~~ sanitary sewers, ***community septic system***, drainage structures, ~~soil erosion and sediment control devices~~, public improvements of open space and ***any grading necessitated by the preceding improvements and, in the case of site plans only, other on-site improvements and landscaping, privately-owned perimeter buffer landscaping.*** ***At the developer's option, a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping.***

b. Performance guarantees shall be submitted in the following form:

1. A minimum of ten (10%) percent of the performance guarantee must be posted in cash.
2. The remaining ninety (90%) percent of the performance guarantee amount may be posted in cash, certified check, irrevocable standby letter of credit or surety bond issued by an insurance company licensed to do business in the State of New Jersey and acceptable to the Borough Attorney in the favor of the Borough.
3. If the applicant elects to post an irrevocable standby letter of credit, it must be written in ~~the following form:~~ ***accordance with the standardized form adopted by regulation by the Department of Community Affairs pursuant to section 1 of P.L.1999, c.68 (C.40:55D-53a) as complying with the provisions of section 41 of P.L.1975, c.291 (C.40:55D-53).***

[DELETE IRREVOCABLE STANDBY LETTER OF CREDIT]

4. All guarantees shall provide for construction of the required improvements within two (2) years of the date of their posting or such other time as determined by the Municipal Agency. This time period may be extended by the Governing Body, in the form of a resolution granting such extension provided the Municipal Agency has, if necessary, extended the period of protection pursuant to N.J.S.A. 40:55D-52a. As a condition of this extension the guarantee amount may be adjusted to one hundred twenty (120%) percent of the estimated cost to construct the improvements at that time and additional inspection fees deemed necessary by the Municipal Agency shall be paid.

5. All performance guarantees shall remain in effect until formally released by the Governing Body by a resolution and receipt of an approved maintenance guarantee as required.

6. All guarantees, sureties, and landing institutions are subject to the approval of the Municipal Attorney and the Governing Body.
(2002 Code § 16.40.020)

30-10.3 Temporary Certificate of Occupancy Guarantee

a. In the event that the developer shall seek a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, as a condition of the issuance thereof, the developer shall furnish a separate guarantee, referred to herein as a "temporary certificate of occupancy guarantee," in favor of the Borough in an amount equal to one hundred twenty (120%) percent of the cost of installation of only those improvements or items which remain to be completed or installed under the terms of the temporary certificate of occupancy and which are required to be installed or completed as a condition precedent to the issuance of the permanent certificate of occupancy for the development, unit, lot, building or phase of development land which are not covered by an existing performance guarantee.

b. Upon posting of a temporary certificate of occupancy guarantee, all sums remaining under a performance guarantee, required pursuant to section 30-10.2, which relate to the development, unit, lot, building, or phase of development for which the temporary certificate of occupancy is sought, shall be released. At no time may a Borough hold more than one guarantee or bond of any type with respect to the same line item.

c. The scope and amount of the temporary certificate of occupancy guarantee shall be determined by the Borough Engineer.

d. The temporary certificate of occupancy guarantee shall be released by the Governing Body upon the issuance of a permanent certificate of occupancy with regard to the development, unit, lot, building, or phase as to which the temporary certificate of occupancy relates.

30-10.4 Safety and Stabilization Guarantee

a. In addition to a performance guarantee required pursuant to Section 30-10.2, a developer shall furnish to the Borough a separate guarantee, referred to herein as a "safety and stabilization guarantee," in favor of the Borough, to be available to the Borough solely for the purpose of returning property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition, only in the circumstance that:

1. Site disturbance has commenced and, thereafter, all work on the development has ceased for a period of at least 60 consecutive days following such commencement for reasons other than force majeure, and

2. Work has not recommenced within 30 days following the provision of written notice by the Borough to the developer of the Borough's intent to claim payment under the guarantee.

b. The amount for the safety and stabilization guarantee shall be calculated to equal the following:

1. For a development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000.

2. For a development with bonded improvements exceeding \$100,000 shall be calculated as a percentage of the bonded improvement costs of the development or

phase of development as follows:

- i. \$5,000 for the first \$100,000 of bonded improvement costs, plus two and a half (2.5%) percent of bonded improvement costs in excess of \$100,000 up to \$1,000,000, plus one (1%) percent of bonded improvement costs in excess of \$1,000,000.
- c. Notice
 - a. The Borough shall not provide notice of its intent to claim payment under a safety and stabilization guarantee until a period of at least 60 days has elapsed during which all work on the development has ceased for reasons other than force majeure. The Borough shall provide written notice to a developer by certified mail or other form of delivery providing evidence of receipt.

30-10.5 Maintenance Guarantee

- a. The developer shall post with the Borough, prior to the release of a performance guarantee required pursuant to Section 30-10.2, a maintenance guarantee, in an amount not to exceed 15% of the cost of the improvements which are being released.
- b. The developer shall post with the Borough, upon the inspection and issuance of final approval of the following private site improvements by the Borough Engineer, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation, which cost shall be determined by the Borough Engineer according to the method of calculation set forth in section 15 of N.J.S.A. 40:55D-53.4, of the following private site improvements:
 1. Stormwater management basins,
 2. In-flow and water quality structures within the basins, and
 3. The out-flow pipes and structures of the stormwater management system, if any.
- c. The term of the maintenance guarantee shall be for a period not to exceed two years and shall automatically expire at the end of the established term.

30-10.36 Inspections.

- a. All site improvements shall be inspected during the time of their installation under the supervision of the Borough Engineer. Prior to the start of construction of any improvements, the applicant shall deposit by cash or certified check with the Borough Clerk the applicable inspection fee required by Section 30-3 of this chapter.
- b. In no case shall installation of underground facilities or any paving work be conducted without permission from the Borough Engineer.
- c. The Borough Engineer's office shall be notified two (2) working days prior to commencement of each of the following phases to construction so that the Borough Engineer or a qualified representative may be present to inspect the work:
 1. Site clearing and grading;
 2. Road subgrade;
 3. Curb and gutter forms;
 4. Curbs and gutters;
 5. Road paving;
 6. Sidewalk forms;
 7. Sidewalks;
 8. Drainage pipes and other drainage construction;
 9. Street name signs;
 10. Monuments;
 11. Sanitary sewers;
 12. Detention and/or retention basins;
 13. Topsoil seeding, planting, shade trees.
- d. Any improvement installed contrary to the plan or plat approval by the Borough shall constitute just cause to void the municipal approval.
- e. any improvements installed without notice for inspection shall constitute just cause for:
 1. The issuance of a "stop work" order by the Municipal Engineer pending the resolution of any dispute;

2. Removal of the uninspected improvements.
3. The payment by the developer of any costs of material testing;
4. The restoration by the developer of any costs for material testing.

f. Inspection by the Borough of installation of improvements and utilities shall not operate to subject the Borough to liability for claims, suits or liability of any kind that may at any time arise because of defects or negligence during construction or at any time thereafter; it being recognized that the responsibility to maintain safe conditions at all times during construction and to provide proper utilities and improvements is upon the owners and his contractor, if any.

(2002 Code § 16.40.030)

g. If the Borough determine that the amount in escrow for the payment of inspection fees is insufficient to cover the cost of additional required inspections, the Borough may require the developer to deposit additional funds in escrow provided that the Borough delivers to the developer a written inspection escrow deposit request, signed by the Borough Engineer, which:

- 1. Informs the developer of the need for additional inspections;**
- 2. Details the items or undertakings that require inspection;**
- 3. Estimates the time required for those inspections; and**
- 4. Estimates the cost of performing those inspections.**

30-10.47 Developers Agreement.

a. Prior to the signing and recording of final major subdivision plats and as a condition of final site plan approval in the case of a site plan, the developer shall enter into the agreement with the Governing Body if so required by the **Borough Municipal** Agency. This agreement shall be of a form that is acceptable to the **Borough Municipal** Attorney and one in which the developer agrees to abide by the terms and condition of approval, construct the required improvements in accordance with the approved plans, agree to maintain the constructed improvements including but not limited to, payment of street lighting charges, snow removal, maintenance of storm drainage, sewer and water facilities. The developer also shall agree that in the event the improvements are not maintained, the Borough can utilize the cash portions of the performance guarantees to immediately attend to items presenting a safety hazard.

b. The developer shall reimburse the Borough for the cost and expense of the developer's agreement and filing of the developer's agreement with the County Clerk in accordance with the applicable professional contract, prior to execution of same.

(2002 Code § 16.40.040)

30-10.58 Release of Guarantees.

a. Upon substantial completion of all required street improvements (except for top course), and appurtenant utility improvements, and the connection of same to the public system, the obligor may request of the Governing Body in writing, by certified mail addressed in care of the **Borough Municipal** Clerk, that the **Borough Municipal** Engineer prepare, in accordance with the itemized cost estimate prepared by the **Borough Municipal** Engineer and appended to the performance guarantee pursuant to subsection 30-10.2a of this section, a list of all uncompleted or unsatisfactory completed improvements. If such a request is made, the obligor shall send a copy of the request to the **Borough Municipal** Engineer. The request shall indicate which **bonded** improvements have been completed and which improvements remain uncompleted in the judgment of the obligor. Concurrent with this notice the obligor shall forward a set of as-built plans for the following:

1. Roads (plan and profiles);
2. Surface and stormwater drainage (plans and profiles) for facilities in roads and easements;
3. Sanitary sewers including individual lot connections and cleanouts (plans and profiles) for facilities in roads and easements;
4. Water mains, gas mains and underground electric, telephone and community antenna television (CATV) conduits (plans and profiles) for facilities in roads and easements.

Upon acceptance of the as-built plan information by the Borough Engineer, two (2) mylar and four (4) paper copies of the as-built plan shall be submitted to the Borough.

Thereupon the **Borough Municipal** Engineer shall inspect all **bonded** improvements of

which such notice has been given and shall file a detailed list and report, in writing, with the Governing Body and shall simultaneously send a copy to the obligor not later than forty-five (45) days after receipt of the obligor's request.

The list prepared by the **Borough Municipal** Engineer shall state, in detail, with respect to each improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness of each incomplete improvement or the nature and extent of, and remedy for the unsatisfactory state of each completed improvement determined to be unsatisfactory. The report prepared by the **Borough Municipal** Engineer shall identify each improvement determined to be complete and satisfactory together with a recommendation as to the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory improvement, in accordance with the itemized cost estimate prepared by the **Borough Municipal** Engineer and appended to the performance guarantee pursuant to subsection 30-10.2a of this section.

b. The Governing Body, by resolution, shall either approve the **bonded** improvements determined to be complete and satisfactory by the **Borough Municipal** Engineer, or reject any or all of these **bonded** improvements upon the establishment in the resolution of the cause for rejection, and shall approve and authorize the amount of reduction to be made in the performance guarantee **and the safety and stabilization bond** relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the **Borough Municipal** Engineer and appended to the performance guarantee pursuant to subsection 20-10.2a of this section. This resolution shall be adopted not later than forty-five (45) days after receipt of the list and report prepared by the **Borough Municipal** Engineer. Upon adoption of the resolution by the Governing Body, the obligor shall be released from all liability pursuant to its performance guarantee **and the safety and stabilization bond** with respect to those approved **bonded** improvements except for the portion adequately sufficient to secure completion or correction of the improvements not yet approved; provided that thirty (30%) percent of the amount of the performance guarantee **and the safety and stabilization bond** posted may be retained to ensure completion and acceptability of all improvements.

c. If the **Borough Municipal** Engineer fails to send or provide the list and report as requested by the obligor pursuant to paragraph a. of this subsection within forty-five (45) days from receipt of the request, the obligor may apply to the court in a summary manner for an order compelling the **Borough Municipal** Engineer to provide the list and report within a stated time and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.

If the Governing Body fails to approve or reject the **bonded** improvements determined by the **Borough Municipal** Engineer to be complete and satisfactory or reduce the performance guarantee for the complete and satisfactory improvements within forty-five (45) days from the receipt of the **Borough Municipal** Engineer's list and report, the obligor may apply to the court in a summary manner for an order compelling, within a stated time, approval of the complete and satisfactory improvements and approval of a reduction in the performance guarantee for the approvable complete and satisfactory improvements in accordance with the itemized cost estimate prepared by the **Borough** Engineer and appended to the performance guarantee pursuant to subsection 30-10.2a of this section; and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.

d. In the event that the obligor has made a cash deposit with the municipality or approving authority as part of the performance guarantee, then any partial reduction granted in the performance guarantee pursuant to this subsection shall be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee-, **provided that if the safety and stabilization guarantee is included as a line item of the performance guarantee the Borough may retain cash equal to the amount of the remaining safety and stabilization guarantee**

e. If any portion of the required **bonded** improvements is rejected, the approving authority may require the obligor to complete or correct such improvements and, upon completion or correction, the same procedure of notification, as set forth in this section shall be followed.

f. Nothing herein, however, shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the Governing body or the **Borough Municipal** Engineer.

g. The obligor shall reimburse the **Borough Municipal** for all reasonable inspection fees paid to the **Borough Municipal** Engineer for the foregoing inspection of improvements; **provided that the Borough Municipal may require of the developer a deposit for the inspection fees in an amount not to exceed, except for extraordinary circumstances which fees shall not exceed the sum of the amounts set forth in the following subsections, Section 30-10.8(h)(1) through (4). The Borough may require the developer to post the inspection fees in escrow in an amount:**

1. Not to exceed, except for extraordinary circumstances, the greater of five hundred (\$500.00) dollars or five (5%) percent of the cost of **bonded** improvements

estimated pursuant to the Municipal Land Use Law.

2. Not to exceed five (5%) percent of the cost of private site improvements that are not subject to a performance guarantee, which cost shall be determined pursuant to section 15 of P.L. 1991, c.256 (C.40:55D-53.4).

3. For those developments for which the reasonably anticipated fees are less than ten thousand (\$10,000.00) dollars, fees may, at the option of the developer, be paid in two (2) installments. The initial amount deposited by a developer shall be fifty (50%) percent of the reasonably anticipated fees. When the balance on deposit drops to ten (10%) percent of the reasonably anticipated fees because the amount deposited by the developer has been reduced by the amount paid to the **Borough Municipal** Engineer for inspection, the developer shall deposit the remaining fifty (50%) percent of the anticipated inspection fees.

4. For those developments for which the reasonably anticipated fees are ten thousand (\$10,000.00) dollars or greater, fees may at the option of the developer, be paid in four (4) installments. The initial amount deposited by a developer shall be twenty-five (25%) percent of the reasonably anticipated fees. When the balance on deposit drops to ten (10%) percent of the reasonably anticipated fees because the amount deposited by the developer has been reduced by the amount paid to the **Borough Municipal** Engineer for inspection, the developer shall file additional deposits of twenty-five (25%) percent of the reasonably anticipated fees.

5. The **Borough Municipal** Engineer shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit nor shall the developer proceed with any work for which an inspection is required until sufficient funds are on deposit **provided that the Borough delivers to the developer a written inspection escrow deposit request, signed by the Borough engineer, which: informs the developer of the need for additional inspections, details the items or undertakings that require inspection, estimates the time required for those inspections, and estimates the cost of performing those inspections.**

h. In the event that final approval is by stages or sections of development pursuant to N.J.S.A. 40:55D-38, the provisions of this subsection shall be applied by stage or section.

~~**i. j. Any release of performance guarantees will be conditioned upon the provision of a maintenance guarantee to be posted with the Governing Body, in an amount equal to fifteen (15%) percent of the performance guarantee amount. The term of the maintenance guarantee shall be two (2) years.**~~

~~**k. l.**~~ No performance guarantees shall be released if the developer shall be in default of its developer's agreement in the payment of escrow fees or payment of taxes.

30-10.6 Development and Construction Prior to Final Subdivision Approval.

The installation of any subdivision improvements or the commencement of any clearing and grading subsequent to preliminary approval shall not be undertaken unless the following has been done:

a. If at any time of preliminary approval but prior to the commencement of final approval, the ~~**subdivider**~~ **developer** elects to proceed with the installation of improvements required under this chapter the ~~**subdivider**~~ **developer** shall furnish the Borough with the final construction drawings and details.

b. The Municipal Agency having jurisdiction over the subdivision (Planning Board or Board of Adjustment) in consultation with the Borough Engineer shall review the final construction plans to determine that the clearing, grading and/or installation of improvements will not hinder future developments or create physical or aesthetic problems in the event that further development of the site is not undertaken.

c. The required construction, inspection, engineering, and administration fees have been paid, and adequate performance guarantees have been posted to provide for the cost to the Borough of performing work that may be necessary to protect adjacent property owners and the public interest in the event that such clearing, grading and/or further development of the site is not undertaken.

Such performance guarantees shall include, but are not limited to, the cost of the Borough providing ~~**stabilization of the site**~~, drainage facilities necessary to protect off-tract areas from flooding, screening, or fencing that may be required and all improvements to be undertaken which are within existing public rights-of-way or easements.

d. In addition to the performance guarantee, a developer shall furnish to the Borough a

separate guarantee, referred to as a “safety and stabilization bond,” in favor of the Borough, for the purpose of returning property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition

~~de.~~ Prior to any disturbance of the site or commencement of any construction, the developer shall enter into an agreement with the Governing Body. This agreement shall be of a form that is acceptable to the Municipal Attorney and one in which the developer agrees to abide by the terms and conditions of approval, construct the required improvements in accordance with the approved plans, agrees to maintain the site and the constructed improvements. The developer also shall agree that in the event that the site and improvements are not maintained, the Borough can utilize the cash portions of the performance guarantee to immediately attend to items presenting a safety hazard.

~~ef.~~ No development permit shall be issued nor any work commenced on site until compliance with this section and notice of intention to commence construction of such improvements shall be furnished to the Borough Engineer,

~~fg.~~ At least two (2) weeks prior to the start of any construction the developer shall notify the Borough Engineer of his intention to start work so that a preconstruction meeting can be arranged between the developer and the Borough Engineer.

~~gh.~~ The Borough Engineer must be notified at least forty-eight (48) hours in advance of any on- site development.

Offered for introduction by Councilwoman Koch, second by Councilwoman Sorensen

Affirmative: Councilmembers Jaeger, Koch, Marchese, Peters, Rodriguez and Sorensen
Negative: None
Abstain: None
Absent: None

3. Ordinance No. 2018-09, Supplement Chapter 9: Special Event Tipping Fee

**AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF FAIR HAVEN
IN THE COUNTY OF MONMOUTH SUPPLEMENTING CHAPTER 9,
PERMITS FOR USE OF PARKS; RECREATION AREAS AND SPECIAL
EVENTS, BY ADDING SECTION 2.8, SPECIAL EVENT TIPPING FEE**

WHEREAS, the New Jersey State Legislature has adopted laws to assist Municipalities in addressing properties that have been abandoned by the property owner; and

WHEREAS, the Legislature has determined that abandoned properties have a negative effect on residents of the Municipalities; and

NOW, THEREFORE, BE IT ORDAINED by the Borough of Fair Haven, County of Monmouth, New Jersey, that Chapter 9 of the Revised General Ordinances of the Borough of Fair Haven, is hereby amended and supplemented as follows:

SECTION I.

9-2.8 SPECIAL EVENT TIPPING FEE.

If it is determined by the Parks and Recreation Department that the projected amount of waste produced by a special event will be greater than the amount of onsite waste receptacles provided at the special event location, the event holder will be subject to a tipping fee. The Director of the Parks and Recreation Department will determine whether one (1) to ten (10) garbage totes and one (1) to ten (10) recycling totes are required at the event site. The Department of Public Works will deliver the required totes to the event site prior to the event and will remove the totes after the event. The person seeking the permit shall pay a fee to the Borough of \$75.00 for up to twenty (20) totes, regardless of non-profit status. Any waste generated by the special event that does not fit within the extra totes provided must be discarded by the event holder on the same day of the event. If the Director of the Parks and Recreation Department determines that a dumpster is required instead of totes, the event holder will be responsible for providing the dumpster for the event. If a dumpster is required, the dumpster provider must provide the Borough with a hold harmless letter and proof of insurance with the Borough listed as an additional insured. The delivery of the dumpster is to be coordinated with

the Director of the Parks and Recreation Department.

SECTION II.

All Ordinances or parts of ordinances inconsistent with or in conflict with the ordinance are hereby repealed to the extent of such inconsistency.

SECTION III.

The Mayor, Clerk, Borough Attorney, and such other officials as may be necessary are authorized to perform such ministerial actions as are necessary to effectuate the purposes of this Ordinance.

Offered for introduction by Councilman Marchese, second by Councilwoman Sorensen

Affirmative: Councilmembers Jaeger, Koch, Marchese, Peters, Rodriguez and Sorensen

Negative: None

Abstain: None

Absent: None

4. Ordinance No. 2018-10, Amend Flood Damage Prevention Regulations

**AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF FAIR HAVEN
IN THE COUNTY OF MONMOUTH AMENDING THE FAIR HAVEN
BOROUGH CODE, CHAPTER 22, FLOOD DAMAGE PREVENTION
REGULATIONS.**

BE IT ORDAINED by the Council of the Borough of Fair Haven, in the County of Monmouth, in the State of New Jersey, as follows:

I.

The purpose of this Ordinance is to amend Chapter 22, Flood Damage Prevention Regulations.

NOTE: Chapter 22, Flood Damage Prevention Regulations is to be amended by this Ordinance. All additions are shown in **bold italics with underlines**. The deletions are shown as ~~**strikeovers in bold italics**~~. Sections in Chapter 22 that will remain unchanged are shown in normal type.

II.

CHAPTER XXII. FLOOD DAMAGE PREVENTION REGULATIONS

22-1 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

22-1.1 Statutory Authorization

The Legislature of the State of New Jersey has in N.J.S.A. 40:48-1, et seq., delegated the responsibility to local governmental units to adopt regulations designed to promote public health, safety, and general welfare of its citizenry. Therefore, the Governing Body of Fair Haven, of Monmouth County, New Jersey does ordain the following:

22-1.2 Findings of Fact

a. The flood hazard areas of the Borough of Fair Haven are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

b. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored, causes damage in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

22-1.3 Statement of Purpose

It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- a. To protect human life and health;
- b. To minimize expenditure of public money for costly flood control projects;
- c. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- d. To minimize prolonged business interruptions;
- e. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, bridges located in areas of special flood hazard;
- f. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- g. To ensure that potential buyers are notified that property is in an area of special flood hazard; and
- h. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

22-1.4 Methods of Reducing Flood Losses

In order to accomplish its purposes, this ordinance includes methods and provisions for:

- a. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- b. Requiring that uses vulnerable to floods including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- c. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- d. Controlling filling, grading, dredging, and other development which may increase flood damage; and,
- e. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

22-2 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“AO Zone” means areas subject to inundation by 1-percent-annual-chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet.

“AH Zone” means areas subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Base Flood Elevations (BFEs) derived from detailed hydraulic analyses are shown in this zone.

"Appeal" means a request for a review of the Local Administrator ~~Construction Official's~~ interpretation of any provision of this ordinance or a request for a variance.

"Area of shallow flooding" means a designated AO or AH, ~~or VO~~ zone on a community's Digital Flood Insurance Rate Map (DFIRM) with a one percent annual or greater chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of special flood hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. **It is shown on the FIRM as Zone V, VE, VI-30, A, AO, A1 through A30, AE, A99, or AH.**

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means the flood elevation shown on a published Flood Insurance Study (FIS) including the Flood Insurance Rate Map (FIRM). For zones AE, AH, AO, and A1-30 the elevation represents the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year. For zones VE and VI-30 the elevation represents the stillwater elevation (SWEL) plus wave effect (BFE = SWEL + wave effect) resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Best Available Flood Hazard Data" means the most recent available flood risk guidance FEMA has provided. The Best Available Flood Hazard Data may be depicted on but not limited to Work Maps or Preliminary FIS and FIRM.

"Best Available Flood Hazard Data Elevation" means the most recent available flood elevation FEMA has provided. The Best Available Flood Hazard Data Elevation may be depicted on a Work Map or Preliminary FIS and FIRM.

"Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

"Coastal A Zone" means the portion of the Special Flood Hazard Area (SFHA) starting from a Velocity (V) Zone and extending up to the landward Limit of the Moderate Wave Action delineation. Where no V Zone is mapped the Coastal A Zone is the portion between the open coast and the landward Limit of the Moderate Wave Action delineation. Coastal A Zones may be subject to wave effects, velocity flows, erosion, scour, or a combination of these forces. Construction and development in Coastal A Zones is to be regulated the same as V Zones/Coastal High Hazard Areas.

"Coastal High Hazard Area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

"Cumulative Substantial Improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure that equals or exceeds 50 percent of the market value of the structure at the time of the improvement or repair when counted cumulatively for 10 years.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within the area of special flood hazard.

"Digital Flood Insurance Rate Map" (DFIRM) means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Elevated building" means a non-basement building (i) built in the case of a building in an Area of Special Flood Hazard to have the top of the elevated floor **or, in the case of a building in a Coastal High-Hazard Area or Coastal A Zone, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated** above the **the base flood elevation plus freeboard ground level** by means of piling, columns (posts and piers), or shear walls parallel to the flow of the water, and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In an Area of Special Flood Hazard "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. **In Areas of Coastal High Hazard and Coastal A Zones "elevated buildings" also includes a building otherwise meeting the definition of "elevated building" even though the lower area is enclosed by means of breakaway walls.**

"Erosion" means the process of gradual wearing away of land masses.

"Existing Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

"Flood or flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- a. The overflow of inland or tidal waters and/or
- b. The unusual and rapid accumulation or runoff of surface waters from any source.

"Flood Insurance Rate Map (FIRM)" means the official map on which the Federal

Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood Insurance Study" (FIS) means the official report in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Insurance Rate Map(s) and the water surface elevation of the base flood.

"Flood plain management regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such State or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed **or existing** walls of a structure.

"Historic Structure" means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a State inventory of historic places in States with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 1. By an approved State program as determined by the Secretary of the Interior; or
 2. Directly by the Secretary of the Interior in States without approved programs.

"Limit of Moderate Wave Action (LiMWA)" means the inland limit of the area affected by waves greater than 1.5 feet during the Base Flood. Base Flood conditions between the V Zone and the LiMWA will be similar to, but less severe than those in the V Zone.

"Lowest Floor" means the lowest floor of the lowest enclosed area [including basement]. An unfinished or flood resistant enclosure, useable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so to render the structure in violation of other applicable non-elevation design requirements **of 44 CFR Section 60.3.**

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

"Manufactured home park or manufactured home subdivision" means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

"New construction" means structures for which the start of construction commenced on or after the effective date of a floodplain regulation adopted by a community and includes any subsequent improvements to such structures.

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes

are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the flood plain management regulations adopted by the municipality.

“Preliminary Flood Insurance Rate Map (FIRM)” means the draft version of the FIRM released for public comment before finalization and adoption.

“Primary Frontal Dune” means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves from coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from the relatively steep slope to a relatively mild slope.

"Recreational vehicle" means a vehicle which is [i] built on a single chassis; [ii] 400 square feet or less when measured at the longest horizontal projections; [iii] designed to be self-propelled or permanently towable by a light duty truck; and [iv] designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Sand Dunes” means the naturally occurring or man-made accumulations of sand in ridges or mounds landward of the beach.

"Start of Construction" for other than new construction or substantial improvements and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation.

Permanent construction does not include land preparation, such as clearing, grading and filling nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings or piers, or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground.

"Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. **Substantial Damage also means flood-related damages sustained by a structure on two or more separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.**

"Substantial Improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure **during a 10-year period**, the cost of which **equals or** exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. **Substantial improvement also means “cumulative substantial improvement.”** This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

a. Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or

b. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

"Variance" means a grant of relief from the requirements of this ordinance that permits construction in a manner that would otherwise be prohibited by this ordinance.

“Violation” means the failure of a structure or other development to be fully compliant with this ordinance. A new or substantially improved structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR §60.3(b)(5), (c)(4), (c)(10), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

22-3 GENERAL PROVISIONS

22-3.1 Lands to Which This Ordinance Applies

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of Borough of Fair Haven, Monmouth County, New Jersey.

22-3.2 Basis for Establishing the Areas of Special Flood Hazard.

The areas of special flood hazard for the Borough of Fair Haven, Community No.

340295 are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

- a. A scientific and engineering report “Flood Insurance Study, Monmouth County, New Jersey (All Jurisdictions)” dated ~~September 25, 2009~~ June 20, 2018.
- b. Flood Insurance Rate Map for Monmouth County, New Jersey (all jurisdictions) as shown on index and panels 34025C0068F, 34025C0181F, 34025C0182FG, whose effective date is ~~September 25, 2009~~ June 20, 2018.
- c. Best Available Flood Hazard Data. These documents shall take precedence over effective panels and FIS in construction and development regulations only. Where the effective mapping or Base Flood Elevation conflict or overlap with the Best Available Flood Hazard Data, whichever imposes the more stringent requirement shall prevail.**

The above documents are hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and maps are on file at 748 River Road, Fair Haven, NJ 07704.

22-3.3 Penalties for Noncompliance

No structure or land shall hereafter be constructed, ~~located~~ relocated to, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$1,000.00 or imprisoned for not more than 90 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Borough of Fair Haven from taking such other lawful action as is necessary to prevent or remedy any violation.

22-3.4 Abrogation and Greater Restrictions

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

22-3.5 Interpretation

In the interpretation and application of this ordinance, all provisions shall be:

- a. Considered as minimum requirements;
- b. Liberally construed in favor of the governing body; and,
- c. Deemed neither to limit nor repeal any other powers granted under State statutes.

22-3.6 Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

This ordinance shall not create liability on the part of Borough of Fair Haven, any officer or employee thereof or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

22-4 ADMINISTRATION

22-4.1 Establishment of Development Permit

A Development Permit shall be obtained before construction or development begins, including placement of manufactured homes, within any area of special flood hazard established in subsection 22-3.2. Application for a Development Permit shall be made on forms furnished by the Local Administrator and Construction Official and may include, but not be limited to; plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing.

Specifically, the following information is required:

- a. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
- b. Elevation in relation to mean sea level to which any structure has been floodproofed.
- c. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 22-5.2b.; and,
- d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

22-4.2 Designation of The Local Administrator

The ~~Construction Official~~ Local Administrator or designee is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions. The Construction Official is hereby authorized to assist implementing this Ordinance as it relates to structures and UCC Construction Code compliance.

22-4.3 Duties and Responsibilities of the Administrator

Duties of the ~~Construction Official~~ Local Administrator or designee shall include, but not be limited to:

- a. *Permit Review.*
 1. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
 2. Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
 3. Review all development permits in the coastal high hazard and Coastal A Zone area to determine if the proposed development alters sand dunes or other natural coastal protections so as to increase potential flood damage.
 4. Review plans for walls to be used to enclose space below the base flood level in accordance with section 22-5.2-2 d).
- b. *Use of Other Base Flood and Floodway Data.* When base flood elevation and floodway data has not been provided in accordance with subsection 22-3.2, Basis for Establishing the Areas of Special Flood Hazard, the ~~Construction Official~~ Local Administrator or designee shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer subsection 22-5.2a, Specific Standards, Residential Construction, and subsection 22-5.2b, Specific Standards, Nonresidential Construction.
- c. *Information to Be Obtained and Maintained*
 1. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
 2. For all new or substantially improved floodproofed structures:

- (a) verify and record the actual elevation (in relation to mean sea level); and
- (b) maintain the floodproofing certifications required in subsection 22-4.1c.

3. In coastal high hazard and Coastal A Zone areas, certification shall be obtained from a registered professional engineer or architect that the provisions of 22-5.3b.1. and 22-5.3b.2. (a) and (b) are met.

4. Maintain for public inspection all records pertaining to the provisions of this ordinance.

d. *Alteration of Watercourses*

1. Notify adjacent communities and the New Jersey Department of Environmental Protection, **Bureau of** Flood Control and the Land Use Regulation Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

2. Require that maintenance is provided within the altered or relocated portion of said watercourse so the flood carrying capacity is not diminished.

e. Substantial Damage Review

1. After an event resulting in building damages, assess the damage to structures due to flood and non-flood causes.

2. Record and maintain the flood and non-flood damage of substantial damage structures and provide a letter of Substantial Damage Determination to the owner and the New Jersey Department of Environmental Protection, Bureau of Flood Control.

3. Ensure substantial improvements meet the requirements of subsections 22-5.2(a), Specific Standards, Residential Construction, 22-5.2(b), Specific Standards, Nonresidential Construction and 22-5.2(c), Specific Standards, Manufactured Homes

f. *Interpretation of Firm Boundaries.* Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in subsection 22-4.4.

22-4.4 Variance Procedure

a. *Appeal Board*

1. The Construction Board of Appeals shall hear and decide appeals and requests for variances from the requirements of this ordinance.

2. The Construction Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the **Construction Official Local Administrator or designee** in the enforcement or administration of this ordinance.

3. Those aggrieved by the decision of the Construction Board of Appeals, or any taxpayer, may appeal such decision to the Superior Court of New Jersey.

4. In passing upon such applications, the Construction Board of Appeals, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

(a) the danger that materials may be swept onto other lands to the injury of others;

(b) the danger to life and property due to flooding or erosion damage;

(c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(d) the importance of the services provided by the proposed facility to the community;

(e) the necessity to the facility of a waterfront location, where applicable;

(f) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

(g) the compatibility of the proposed use with existing and anticipated development;

(h) the relationship of the proposed use to the comprehensive plan and flood plain management program of that area;

(i) the safety of access to the property in times of flood for ordinary and emergency vehicles;

(j) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

(k) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

5. Upon consideration of the factors of subsection 22-4.4(a)(4) and the purposes of this ordinance, the Construction Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

6. The Construction Official shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.

b. *Conditions for Variances*

1. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (a-k) in 22-4.4(a)(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

2. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

5. Variances shall only be issued upon:

- (a) a showing of good and sufficient cause;
- (b) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
- (c) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subsection 22-4.4(a)(4), or conflict with existing local laws or ordinances.

6. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

22-5 PROVISIONS FOR FLOOD HAZARD REDUCTION

22-5.1 General Standards

In all areas of special flood hazards, *compliance with the applicable requirements of the Uniform Construction Code (N.J.A.C. 5:23) and the following standards, whichever is more restrictive, is required the following standards are required:*

a. *Anchoring*

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

2. All manufactured homes *to be placed or substantially improved* shall be

anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

b. *Construction Materials and Methods*

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

c. *Utilities*

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters;
3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and
4. **For all new construction and substantial improvements the** electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

d. *Subdivision Proposals*

1. All subdivision proposals **and other proposed new development** shall be consistent with the need to minimize flood damage;
2. All subdivision proposals **and other proposed new development** shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
3. All subdivision proposals **and other proposed new development** shall have adequate drainage provided to reduce exposure to flood damage; and,
4. Base flood elevation data shall be provided for subdivision proposals and other proposed **new** development which contain at least 50 lots or 5 acres (whichever is less).

e. *Enclosure Openings*

All new construction and substantial improvements having fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two (2) openings **in at least two (2) exterior walls of each enclosed area,** having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, or other covering or devices provided that they permit the automatic entry and exit of floodwaters.

22-5.2 Specific Standards

In all areas of special flood hazards where base flood elevation data have been provided as set forth in subsection 22-3.2, Basis for Establishing the Areas of Special Flood Hazard or in subsection 22-4.3(b), Use of Other Base Flood Data, the following standards are required:

a. *Residential Construction*

1. **For Coastal A Zone construction see section 22-5.3 Coastal High Hazard Area**

And Coastal A Zone.

2. New construction and substantial improvement of any residential structure **located in an A or AE zone** shall have the lowest floor, including basement **together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated at or above the base flood elevation (published FIS/FIRM) or the best available flood hazard data elevation plus one (1) foot, or as required by ASCE/SEI 24-14, Table 2-1, whichever is more restrictive, elevated to or above base flood elevation;**

3. Require within any AO **or AH** zone on the municipality's FIRM that all new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, **together with the attendant utilities and sanitary facilities, elevated above the depth number specified in feet plus one (1) foot,** above the highest adjacent grade **at least as high as the depth number specified in feet** (at least ~~two~~ **three** feet if no depth number is specified). And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

b. *Nonresidential Construction*

In an Area of Special Flood Hazard, all new construction and substantial improvement of any commercial, industrial or other nonresidential structure located in an A or AE zone (for Coastal A Zone construction see section 22-5.3 Coastal High Hazard Area And Coastal A Zone) shall have the lowest floor, including basement together with the attendant utilities and sanitary facilities as well as all electrical, heating, ventilating, air-conditioning and other service equipment; either

1. ~~**New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or**~~ **Elevated to or above the base flood elevation (published FIS/FIRM) or the best available flood hazard data elevation plus one (1) foot, or as required by ASCE/SEI 24-14, Table 2-1, whichever is more restrictive; and**

2. Require within any AO **or AH** zone on the municipality's FIRM ~~**that all new Construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet to elevate above the depth number specified in feet plus one (1) foot, above the highest adjacent grade**~~ (at least ~~two~~ **three** feet if no depth number is specified). And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures; ~~**or together with the attendant utilities and sanitary facilities, shall:**~~

3. Be floodproofed so that below the base flood level **or the best available flood hazard data elevation, plus one (1) foot or as required by ASCE/SEI 24-14, Table 6-1, whichever is more restrictive,** the structure is watertight with walls substantially impermeable to the passage of water;

4. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,

5. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall be provided to the official as set forth in subsection 22-4.3(c)(2).

c. *Manufactured Homes*

1. Manufactured homes shall be anchored in accordance with subsection 22-5.1(a)(2).

2. All manufactured homes to be placed or substantially improved within an area of special flood hazard shall: ~~**be elevated on a permanent foundation such that the top of the lowest floor is at or above the base flood elevation.**~~

(a) Be consistent with the need to minimize flood damage,

- (b) Be constructed to minimize flood damage.
- (c) Have adequate drainage provided to reduce exposure to flood damage,
- (d) Be elevated on a permanent foundation such that the top of the lowest floor is at or above the base flood elevation (published FIS/FIRM) or the best available flood hazard data elevation, plus one (1) foot or as required by ASCE/SEI 24-14, Table 2-1, whichever is more restrictive; and,
- (e) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

22-5.3 Coastal High Hazard Area And Coastal A Zone

Coastal high hazard areas (V or VE Zones) and coastal A Zones are located within the areas of special flood hazard established in section 3.2. These areas have special flood hazards associated with high velocity waters from tidal surges and hurricane wave wash; therefore, the following provisions shall apply:

a. Location Of Structures

1. All buildings or structures shall be located landward of the reach of the mean high tide.
2. The placement of manufactured homes shall be prohibited, except in an existing manufactured home park or subdivision.

b. Construction Methods

1. Elevation All new construction and substantial improvements shall be elevated on piling or columns so that:

- (a) The bottom of the lowest horizontal structural member of the lowest floor (excluding the piling or columns) is elevated to or above the base flood elevation (published FIS/FIRM) or the best available flood hazard data elevation, plus one (1) foot; or as required by ASCE/SEI 24-14, Table 4-1, whichever is more restrictive.
- (b) All electrical, heating, ventilating, air-conditioning, mechanical equipment and other equipment servicing the building is elevated one (1) foot above the base flood elevation and
- (c) With all space below the lowest floor's supporting member open so as not to impede the flow of water, except for breakaway walls as provided or in section 22-5.3b.4.

2. Structural Support

- (a) All new construction and substantial improvements shall be securely anchored on piling or columns.
- (b) The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse or lateral movement due to the effects of wind and water loading values each of which shall have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).
- (c) Prohibit the use of fill for structural support of buildings within Zones VI-30, VE, V, and Coastal A on the community's FIRM.

3. Certification

A registered professional engineer or architect shall develop or review the structural design specifications and plans for the construction and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for compliance with the provisions of section 22-5.3b.1. and 22-5.3b.2. (a) and (b).

4. Space Below The Lowest Floor

- (a) Any alteration, repair, reconstruction or improvement to a structure started after the enactment of this ordinance shall not enclose the space below the lowest floor unless breakaway walls, open wood lattice-work or insect screening are used as provided for in this section.

(b) Breakaway walls, open wood lattice-work or insect screening shall be allowed below the base flood elevation provided that they are intended to collapse under wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system. Breakaway walls shall be designed for a safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions.

(i) breakaway wall collapse shall result from a water load less than that which would occur during the base flood and,

(ii) the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water load acting simultaneously on all building components (structural and non-structural). Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards.

(c) If breakaway walls are utilized, such enclosed space shall be used solely for parking of vehicles, building access, or storage and not for human habitation.

(d) Prior to construction, plans for any breakaway wall must be submitted to the Construction Code Official or Building Sub-Code Official for approval.

c. Sand Dunes

Prohibit man-made alteration of sand dunes within Coastal A Zones, VE and V Zones on the community's DFIRM which would increase potential flood damage.

Offered for introduction by Councilwoman Koch, second by Councilman Jaeger

Affirmative: Councilmembers Jaeger, Koch, Marchese, Peters, Rodriguez and Sorensen

Negative: None

Abstain: None

Absent: None

5. Ordinance No. 2018-11, Amend Chapter 14: Tree Preservation-Tree Care Operator and Licensing Requirement

**AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF FAIR HAVEN
IN THE COUNTY OF MONMOUTH SUPPLEMENTING CHAPTER 14,
PROPERTY MAINTENANCE, BY AMENDING SECTION 8, TREE
PRESERVATION**

BE IT ORDAINED by the Council of the Borough of Fair Haven, in the County of Monmouth, in the State of New Jersey, as follows:

I.

The purpose of this Ordinance is to supplement Chapter 14, specifically Section 8 Tree Preservation.

NOTE: The section of Chapter 14 that is to be supplemented by Ordinance is Section 8 Tree Preservation. All additions are shown in **bold italics with underlines**. The deletions are shown as ~~**strikeovers in bold italics**~~. Sections of Chapter 14-8 that will remain unchanged are shown in normal type.

II.

14-8 TREE PRESERVATION

c. Definitions and Word Usage. For the purposes of this section, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Borough Tree shall mean any tree on Borough owned property or in Borough right-of-way.

Diameter at Breast Height (DBH) shall mean the diameter of a tree measured at breast

height, which is approximately four and one-half (4.5) feet above the ground. The diameter of a multitunked tree shall be two-thirds (2/3) of the sum of the diameters of all trunks but not less than the diameter of the largest trunk. Diameter shall be calculated to be one-third (1/3) of the circumference for the purpose of this definition.

Emergency shall mean any unforeseen circumstances or occurrence, the existence of which constitutes a clear and immediate danger or hazard to person or property.

Mitigation Plan shall mean a plan prepared by a tree expert showing the planting of replacement trees on the property on which tree removal is taking place. The plan must conform to the provisions set forth in this section.

Ornamental Tree shall mean any living Dogwood, American Holly, and Native Laurel with an anticipated mature height of six (6) feet or more.

Permittee shall mean any person who has been issued a permit pursuant to the terms and conditions of this section and who is obligated to fulfill all the terms of this section.

Person shall mean any person, firm, partnership, association, corporation, company, or public or private organization of any kind other than those exempted from the provisions of this section.

Removal shall mean the actual removal of trees, or direct or indirect actions resulting in the effective removal of trees through damage or poison, or similar actions directly or indirectly resulting in the death of trees subject to the provisions of this section. Moving a tree to a different location on the same property does not constitute removal. Removal shall not include pruning for maintenance purposes.

Significant Specimen Trees shall mean any tree with a diameter at breast height (DBH) exceeding sixty (60%) percent of that of the largest similar tree listed in either the "Monmouth County's Largest Trees" prepared and annually updated by the Monmouth County Shade Tree Commission or "New Jersey's Big Trees" prepared and updated biannually by the Division of Parks & Forestry of the New Jersey Department of Environmental Protection.

Specimen Tree shall mean any tree or ornamental tree which is not a Significant Specimen Tree and which has a diameter at breast height (DBH) of ten (10) inches or more.

Tree shall mean any living deciduous or evergreen tree with a normally anticipated mature height of twenty (20) feet or greater (including, but not limited to: Norway, Red, Silver or Sugar Maple, Sweetgum, London Plane, American Sycamore, White, Red or Pin Oak, American Elm, Yellow or White Poplar, Copper Beech, Cedar, Spruce, Pine, Fire or Hemlock).

Tree Expert shall mean a *person licensed to provide tree expert services in the State of New Jersey pursuant to the "Tree Experts and Tree Care Operating Licensing Act" N.J.S.A. 45:15C-11 et al.*

Tree Care Operator shall mean a person licensed to provide tree care operator services in the State of New Jersey pursuant to the "Tree Experts and Tree Care Operating Licensing Act" N.J.S.A. 45:15C-11 et al.

k. Violations and Penalties. Any person who violates the provisions of this section, shall be subject to the following penalties:

Failure to be a licensed pursuant to terms of the "Tree Experts and Tree Care Operating Licensing Act" N.J.S.A. 45:15C-11 et al. shall be considered a violation of the Act and the Borough of Fair Haven shall report the violation to the Board of Tree Experts.

Failure to comply with any provisions of this section shall be considered a violation of the Code of the Borough of Fair Haven and shall be punishable, upon conviction, by the penalty stated in Chapter I, Section 1-5. Each day of such violations continuance shall be considered as a separate offense and shall be separately punishable. These penalties shall not be the exclusive remedy available to the Borough and nothing in this section shall prevent the Borough or a property owner from seeking injunctive relief.

Offered for introduction by Councilwoman Sorensen, second by Councilman Jaeger

Affirmative: Councilmembers Jaeger, Koch, Marchese, Peters, Rodriguez and Sorensen

Negative: None

Abstain: None

Absent: None

6. Ordinance No. 2018-12, Amend Capital Bond Ordinance No. 2017-07

**BOND ORDINANCE AMENDING AND SUPPLEMENTING BOND
ORDINANCE NUMBER 2017-07 (WHICH PROVIDES FOR
VARIOUS 2017 CAPITAL IMPROVEMENTS) HERETOFORE
FINALLY ADOPTED BY THE BOROUGH COUNCIL OF THE
BOROUGH OF FAIR HAVEN, IN THE COUNTY OF MONMOUTH,
STATE OF NEW JERSEY, ON JULY 10, 2017, TO AMEND THE
DESCRIPTION SET FORTH THEREIN**

**BE IT ORDAINED AND ENACTED BY THE BOROUGH COUNCIL OF
THE BOROUGH OF FAIR HAVEN, IN THE COUNTY OF MONMOUTH, STATE OF
NEW JERSEY** (not less than two-thirds of all members thereof affirmatively concurring) **AS
FOLLOWS:**

SECTION 1. Section 3(a)(iii) of Bond Ordinance Number 2017-07 finally adopted on July 10, 2017 by the Borough of Fair Haven, in the County of Monmouth, State of New Jersey (the "Borough") entitled, "BOND ORDINANCE PROVIDING FOR VARIOUS 2017 CAPITAL IMPROVEMENTS, BY AND IN AND THE BOROUGH OF FAIR HAVEN, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY; APPROPRIATING \$2,297,550 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$2,182,672 BONDS OR NOTES OF THE BOROUGH TO FINANCE PART OF THE COST THEREOF" (the "Original Ordinance"), is hereby amended and supplemented to amend the description set forth therein, as follows:

“ . . .

<u>Description</u>	<u>Appropriation</u>	<u>Authorization</u>	<u>Down Payment</u>	<u>Useful Life</u>
(iii) <u>Buildings and Grounds</u> – Various Reconstruction And/Or Improvements To And Preliminary Expenses Associated With The Department Of Public Works Building, The Police Department, Community Center And Borough Hall Buildings And Any Other Borough Building Or Facility And Any Property Acquisition Associated Therewith, Including, But Not Limited To, Façade, Wall And Roof Improvements, Door And Window Improvements, Restroom Improvements, Heating, Ventilation And Air Conditioning System Improvements, And The Acquisition And Installation, As Applicable, Of Various Equipment and Furnishings Including, But Not Limited To, Computer Hardware And Software, Flooring And Furniture; and ...”	\$1,756,800	\$1,668,959	\$87,841	20 years

SECTION 2. For the improvements or purposes set forth in the Original Ordinance, as amended and supplemented hereby, the additional sum of \$287,450 is hereby included for the items of expense listed in and permitted under N.J.S.A. 40A:2-20, making the total amount for such items of expense \$500,000, such total amount being included in the estimated cost indicated herein for the improvements or purposes set forth in the Original Ordinance, as amended and supplemented hereby.

SECTION 3. Except as expressly amended and supplemented hereby, the Original Ordinance shall remain in full force and effect.

SECTION 4. The Borough covenants to maintain the exclusion from gross income under Section 103(a) of the Code of the interest on all bonds and notes issued under this ordinance.

SECTION 5. This bond ordinance shall take effect twenty (20) days after final adoption,

and approval by the Mayor, if applicable, as provided by the Local Bond Law.

Administrator Casagrande explained the ordinance and reason for the amendment. There is no change to the dollar amount of the Bond, just the wording under description.

Offered for introduction by Councilwoman Sorensen, second by Councilman Jaeger

Affirmative: Councilmembers Jaeger, Koch, Marchese, Peters, Rodriguez and Sorensen

Negative: None

Abstain: None

Absent: None

CONSENT AGENDA
RESOLUTIONS

1. Resolution No. 2018-85, Approve Sidewalk Café Permit – Tavolo Pronto

WHEREAS, Chapter 4-2.1 governs Sidewalk Cafes and Restaurants in the Borough of Fair Haven; and

WHEREAS, Tavolo Pronto, 610 River Road, has filed the appropriate Sidewalk Café License Application and paid the appropriate fee to the Borough Clerk; and

WHEREAS, the Police Chief has reviewed said application and submitted approval for said permit as follows:

5 Tables and 20 chairs to accommodate 20 patrons.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Borough of Fair Haven that the Sidewalk Café Permit is hereby approved and shall be issued by the Municipal Clerk with an expiration date of December 1, 2018.

Offered for adoption by Councilman Jaeger, second by Councilman Rodriguez

Affirmative: Councilmembers Jaeger, Koch, Marchese, Peters, Rodriguez and Sorensen

Negative: None

Abstain: None

Absent: None

2. Resolution No. 2018-86, Certification of Compliance with Federal Civil Rights Requirements

WHEREAS, N.J.S.A. 40A:4-5 as amended by P.L. 2017, c.183 requires the governing body of each municipality and county to certify that their local unit's hiring practices comply with the United States Equal Employment Opportunity Commission's "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964," *as amended*, 42 U.S.C. § 2000e *et seq.*, (April 25, 2012) before submitting its approved annual budget to the Division of Local Government Services in the New Jersey Department of Community Affairs; and

WHEREAS, the members of the governing body have familiarized themselves with the contents of the above-referenced enforcement guidance and with their local unit's hiring practices as they pertain to the consideration of an individual's criminal history, as evidenced by the group affidavit form of the governing body attached hereto.

NOW, THEREFORE BE IT RESOLVED, that the Mayor and Council of the Borough of Fair Haven, hereby states that it has complied with N.J.S.A. 40A:4-5, as amended by P.L. 2017, c.183, by certifying that the local unit's hiring practices comply with the above-referenced enforcement guidance and hereby directs the Clerk to cause to be maintained and available for inspection a certified copy of this resolution and the required affidavit to show evidence of said compliance.

Offered for adoption by Councilman Jaeger, second by Councilman Rodriguez

Affirmative: Councilmembers Jaeger, Koch, Marchese, Peters, Rodriguez and Sorensen

Negative: None

Abstain: None

Absent: None

3. Resolution No. 2018-87, Award Fair Haven Day Fireworks Contract to Garden State Fireworks (\$15,000)

WHEREAS, the Borough of Fair Haven solicited quotes for a fireworks display during Fair Haven Day on June 9, 2018 (rain date of June 10, 2018); and

WHEREAS, the following quote was received:

Garden State Fireworks submitted a quote in the amount of \$15,000.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Fair Haven that the Borough Administrator is hereby authorized to execute a contract with Garden State Fireworks, Inc. in the amount of \$15,000 for Fair Haven Day which will take place on June 9, 2018 (rain date of June 10, 2018).

Offered for adoption by Councilman Jaeger, second by Councilman Rodriguez

Affirmative: Councilmembers Jaeger, Marchese, Peters and Rodriguez

Negative: None

Abstain: Councilmembers Koch and Sorensen

Absent: None

4. Resolution No. 2018-88, Waive ABC Municipal Codes for Fair Haven Day

WHEREAS, the Borough of Fair Haven will be holding a picnic for Fair Haven Day on June 9, 2018 (rain date June 10, 2018); and

WHEREAS, Borough Code 3-19.1 “prohibits open consumption of any alcoholic beverages on public property within the Borough unless authorized by the Governing Body, or on private property without consent of the owner of the property or the person, over the age of twenty-one (21) years, in possession or control of the property” and Borough Code 9-1.22 “prohibits alcoholic beverages while in a public park, open space, sanctuary, or recreation area and all persons shall conduct themselves in a proper and orderly manner and, in particular, no person shall bring alcoholic beverages, drink same at any time nor shall any person be under the influence of intoxicating liquor”; and

WHEREAS, the picnic will take place at Fair Haven Fields and will include the provision of alcoholic beverage requiring that the above-mentioned codes be waived for alcohol purchased through the Foundation of Fair Haven as no outside alcohol will be permitted.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Fair Haven that Borough Codes 3-19.1 and 9-1.22 be waived on June 9, 2018 (rain date of June 10, 2018) between the hours of 4:00 p.m. and 10:00 p.m. for Fair Haven Day and codes be waived for alcohol purchased through the Foundation of Fair Haven as no outside alcohol will be permitted.

Offered for adoption by Councilman Jaeger, second by Councilman Rodriguez

Affirmative: Councilmembers Jaeger, Marchese, Peters and Rodriguez

Negative: None

Abstain: Councilmembers Koch and Sorensen

Absent: None

5. Resolution No. 2018-89, Establish Personnel for Fair Haven Day Event

WHEREAS, the Mayor and Council of the Borough of Fair Haven that the Borough Administrator is authorized to allocate Borough resources, including Borough Personnel and budgeted funds, to successfully carry out the Fair Haven Day event on June 10, 2017.

BE IT FURTHER RESOLVED that Police personnel will receive the Special Duty Rate of \$50.00 per hour as per Ordinance 2017-10.

Offered for adoption by Councilman Jaeger, second by Councilman Rodriguez

Affirmative: Councilmembers Jaeger, Marchese, Peters and Rodriguez

Negative: None
Abstain: Councilmembers Koch and Sorensen
Absent: None

6. Resolution No. 2018-90, Approve 38th Red Bank CROP Hunger Walk (October 21, 2018)

WHEREAS, the Annual Red Bank Area Crop Walk for the Hungry helps to make a difference in the lives of people here at home through fourteen local partner programs and around the world in eighty countries by raising money and peanut butter for food pantries; and

WHEREAS, the Annual Red Bank Area Crop Walk for the Hungry has been serving those in need for many years; and

WHEREAS, the Annual Red Bank Area Crop Walk for the Hungry has requested permission to conduct their 38th Annual walk through Fair Haven between the hours of 2:00 pm and 3:00 pm on Sunday, October 21, 2018; and

WHEREAS, Fair Haven Police Chief Joseph McGovern, has advised, in writing, his approval for this event.

NOW THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Fair Haven that the request to permit the 38th Annual Red Bank Area Crop Walk for the Hungry in the Borough of Fair Haven is hereby approved to be held on Sunday, October 21, 2018 between the hours of 2:00 pm and 3:00 pm.

Offered for adoption by Councilman Jaeger, second by Councilman Rodriguez

Affirmative: Councilmembers Jaeger, Koch, Marchese, Peters, Rodriguez and Sorensen
Negative: None
Abstain: None
Absent: None

7. Resolution No. 2018-91, Executive Session-Personnel, Possible Litigation and Contract Negotiations

WHEREAS, the Open Public Meetings, P. L. 1975, Chapter 231 permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist; and

WHEREAS, the Governing Body may wish to discuss the following matters:

Personnel

1. Tax Assessor
2. DPW Job Posting

Possible Litigation

1. Yacht Works

Contract Negotiations

1. PBA Contract
2. Architect Proposal

WHEREAS, minutes will be kept and once the matter involving the confidentiality of the above no longer requires that confidentiality, then the minutes can be made public.

NOW THEREFORE BE IT RESOLVED that the public be excluded from this meeting.

Offered for adoption by Councilman Jaeger, second by Councilman Rodriguez

Affirmative: Councilmembers Jaeger, Koch, Marchese, Peters, Rodriguez and Sorensen
Negative: None
Abstain: None

Absent: None

8. Resolution No, 2018-92, Amend Temporary Emergency Appropriation

WHEREAS, emergent conditions have arisen with respect to the payment of bills in a number accounts and no adequate provision has been made in a Year 2018 temporary budget for the aforesaid purposes; and

WHEREAS, NJSA 40A:4-20 provides for the creation of an emergency temporary appropriation for the purposes above mentioned; and

WHEREAS, the total temporary emergency resolutions adopted in the year 2018 for the Borough pursuant to the provisions of Chapter 96, PL 1951 (NJSA 40A:4-20) including this resolution total \$2,553,315.56 for the Current Fund.

NOW, THEREFORE, BE IT RESOLVED that not less than two-thirds of all members of the Borough Council of the Borough of Fair Haven, New Jersey affirmatively concurring in accordance with the provisions of NJSA 40A:4-20:

1. An emergency temporary appropriation shall be and the same is hereby made for the following purposes:

Account Number	Description	Amount	Reason
Current Account			
8-01-26-315-235	Vehicle Maint. New Equip. / Repair	\$ 15,000.00	Carry to budget adoption
TOTAL		\$ 15,000.00	

2. That said emergency temporary appropriations will be provided for in the 2018 budget under the appropriate titles.

3. That one certified copy of this resolution will be filed with the Director of Local Government Services.

Offered for adoption by Councilman Jaeger, second by Councilman Rodriguez

Affirmative: Councilmembers Jaeger, Koch, Marchese, Peters, Rodriguez and Sorensen

Negative: None

Abstain: None

Absent: None

9. Resolution No. 2018-93, Payment of Vouchers

BE IT RESOLVED by the Governing Body of the Borough of Fair Haven that the vouchers listed for payment on the April 9, 2018 agenda are hereby approved and the Finance Department is hereby authorized to release payment to the various vendors.

2017 CURRENT ACCOUNT	\$ 1,771.08
2018 CURRENT ACCOUNT	\$3,227,478.27
GENERAL CAPITAL	\$ 213,801.71
PAYROLL AGENCY	\$ 13,498.45
OTHER TRUST	\$ 21,572.09
DOG TRUST	\$ 14.40

TOTAL \$3,478,136.00

Offered for adoption by Councilman Jaeger, second by Councilman Rodriguez

Affirmative: Councilmembers Jaeger, Koch, Marchese, Peters, Rodriguez and Sorensen

Negative: None

Abstain: None

Absent: None

10. Resolution No. 2018-94, Oppose the legalization of recreational marijuana use

WHEREAS, recent news stories have indicated that the Phil Murphy, Governor of the State of New Jersey, will move to legalize recreational marijuana use within his first 100 days in office; and

WHEREAS, the United States of America outlawed recreational cannabis pursuant to the Controlled Substances Act, 21 U.S.C. Section 811; and

WHEREAS, currently only eight states and the District of Columbia have legalized recreational marijuana; and

WHEREAS, since the legalization of recreational marijuana in Colorado, there has been 55 documented traffic deaths involving drivers under the influence of marijuana and 125 reported traffic deaths in 2016; and

WHEREAS, in 2016 the Rocky Mountain High Density Drug Trafficking Area (“RMHDDTA”) report demonstrated that marijuana use among Colorado teens aged 12 to 17 is 74% above the national average; and

WHEREAS, the Mayor and Council of the Borough of Fair Haven are committed to the health and welfare of its citizens; and

WHEREAS, the Council strongly supports the success and positive future of the Borough’s youth; and

WHEREAS, recent analysis from the National Institute on Drug Abuse reveals the potency of marijuana has reached the highest level since scientific analysis of the drug began, with tetrahydrocannabinol (THC) [the principal psychoactive constituent of the cannabis plant] amounts rising from 4 percent in 1980s to 15 percent in 2012; and

WHEREAS, marijuana concentrates, with potencies of 90 percent THC and above, are becoming more and more common in states that have legalized marijuana; and

WHEREAS, marijuana use is associated with (i) addiction, (ii) respiratory illnesses, (iii) and cognitive impairment; and

WHEREAS, the threat to public safety caused by use of drugs, including marijuana, in terms of highway safety and criminal activity; and

WHEREAS, the Council believes the effort to legalize marijuana is contrary to the interests of the public health, safety and welfare of its citizens and desires to preserve the rights of citizens to live and work in a community where drug abuse is not accepted and citizens are not subjected to the adverse effects of drug abuse; and

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of Borough of Fair Haven, opposes legalizing the sale, distribution and possession of recreational (non-medical) marijuana, hashish, marijuana concentrates, and products made from marijuana concentrates.

NOW THEREFORE BE IT FURTHER RESOLVED that a copy of this Resolution is forwarded to Senator Declan O’Scanlon, Assemblywoman Amy Handlin, Assemblywoman Serena DiMaso, the Lieutenant Governor and the Governor of the State of New Jersey.

Offered for adoption by Councilman Jaeger, second by Councilman Rodriguez

Affirmative: Councilmembers Jaeger, Koch, Marchese, Peters, Rodriguez and Sorensen
Negative: None
Abstain: None
Absent: None

11. Resolution No. 2018-95, Reject Bids received for Fair Haven Fields Buffer Restoration

WHEREAS, on April 5, 2018, the Borough of Fair Haven received and publicly opened bids from contractors for the Fair Haven Fields Buffer Restoration Project; and

WHEREAS, bids were received from the following firms:

1.	Glenside Equipment Farmingdale, NJ	\$ 67,700.00
2.	Earth Works Farmingdale, NJ	\$113,500.00
3.	Dawson Corporation Clarksburg, NJ	\$153,862.50

WHEREAS, the bids have been reviewed by the Borough Engineer; and

WHEREAS, the Borough Engineer has recommended that all bids be rejected on the basis that the bids exceed the Engineer Estimate, as well as the total grant and Borough Funds available for the project.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Borough of Fair Haven that the three bids received for the Fair Haven Fields Buffer Restoration Project are rejected.

Offered for adoption by Councilman Jaeger, second by Councilman Rodriguez

Affirmative: Councilmembers Jaeger, Koch, Marchese, Peters, Rodriguez and Sorensen

Negative: None

Abstain: None

Absent: None

Reports of Departments

March 2018

-Municipal Clerk

-Dog License

-Tax Collector

Motion to accept the reports as submitted moved by Councilman Jaeger, second by Councilwoman Sorensen with Ayes by all present.

GOOD OF THE BOROUGH

Mayor Lucarelli opened the meeting to the public for comments or questions at 7:25 p.m. Jennifer Spitz, William Street, addressed the brush grinding operation that takes place in her area and asked that it be moved for the safety of the neighborhood residents, especially the children. There is a lot of noise pollution as well as mold from the mulch. She works from home and the noise is terrible. She asked if the brush site can be swapped with the community garden area near Fair Haven Fields. Mayor Lucarelli advised that a Class B Recycling Facility License is hard to get and hard to move. Mrs. Spitz submitted written statements from her neighbors regarding this matter. The Mayor said it is noted that since the site was located in that area that a new neighborhood was developed. There is a Conference of Mayors event this month and he will discuss our license and location of the brush site with the DEP. If our brush grinding facility was shut down, it would be detrimental to the Borough; there would be large expenses to have it processed off site (new equipment, additional staff and processing). Mrs. Spitz said the neighborhood kids are all outside playing, riding their bikes, etc. which is better than them staying inside on their tablets, computers. There are toxins in the area when there is brush grinding taking place which is not good to breath in.

Laura Kuras said she has lived on Williams Street since 2004 and asked that the Borough to restrict the usage of the brush site. There have been a lot of changes in the area over the years. It was asked that the brush area be reviewed in relation to the homes and population and to see if there is an alternative. There is a limited quality of life. It was also requested that the speed limit in the area be reviewed as well. Mayor Lucarelli asked Chief McGovern to look at the speed limits on the streets in the area of the brush site.

Michael McCue, William Street, asked if there was a variance for the width of the street; there are a lot of cars in the roadway and then the tractor trailers come through when brush is processed which is dangerous. He asked for a cost benefit analysis of the brush site be done. The Borough has had an Interlocal Service Agreement with Rumson since Superstorm Sandy when they lost their Class B facility; they bring their brush to us. We cut their drop offs significantly last year to help alleviate the truck traffic in the neighborhoods.

Ruth Blaser, River Road, said that River Road is getting worse (a lot of street opening patches) and we need to get the County to address the condition of the roadway.

Councilwoman Sorensen reported that Spring Adult Fitness begins this weekend, opening day for Baseball is Saturday, April 14th kicking off with a 9:00 a.m. parade. Rec N Crew registration is now open. The Annual Fishing Derby will be Saturday, May 5th.

Councilman Rodriguez said the 5K Suicide Awareness Run is this weekend on April 15th;

participants can also walk. It begins at 9:00 a.m. starting at Rumson-Fair Haven Regional High School.

Mrs. Blaser said there was no one at the DPW facility at 12:40 p.m on Saturday; she was advised that bulk drop off was cancelled due to the anticipated snow. She was advised that the bulk drop off facility/schedule is under review. There will be a bulk drop off on April 21st and there are two drop off dates in May.

There being no further comments or questions, the meeting was closed to the public at 7:38 p.m.

Council went into executive session at 7:46 p.m. and this meeting was reconvened at 8:50 p.m.

ADJOURNMENT

Motion to adjourn moved by Councilman Jaeger, second by Councilman Peters with Ayes by all present.

Time of Adjournment: 8:51 p.m.

Respectfully submitted,

Allyson M. Cinquegrana, RMC/CMR
Borough Clerk