

TOWNSHIP OF WASHINGTON  
BERGEN COUNTY, NEW JERSEY

ORDINANCE No. 17-15

**AN ORDINANCE OF THE TOWNSHIP OF WASHINGTON, COUNTY OF BERGEN, AND STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 239A OF THE TOWNSHIP CODE, ENTITLED "DEVELOPMENT FEES" TO UPDATE PROVISIONS ASSOCIATED WITH AFFORDABLE HOUSING DEVELOPMENT FEES**

**WHEREAS**, in *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules; and

**WHEREAS**, pursuant to PL 2008, c.46, Section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans, and municipalities that are under the jurisdiction of a court of competent jurisdiction and have an approved spending plan may retain fees collected from non-residential development; and

**WHEREAS**, pursuant to the March 10, 2015 Order of the New Jersey Supreme Court in *In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing*, 221 N.J. 1 (2015) (*Mount Laurel IV*), the Court transferred all COAH's functions, powers, and duties to the Courts, and thus, any and all references to COAH shall mean the Courts or successor agency to COAH if such entity is established by statute; and

**WHEREAS**, this ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to the Court's regulations and in accordance PL 2008, c.46, Sections 8 and 32 through 38.

**NOW, THEREFORE, BE IT ORDAINED**, by the Mayor and Council of the Township of Washington in the County of Bergen and State of New Jersey as follows:

**SECTION 1.** Chapter 239A, Development Fees relating to Mount Laurel housing, is hereby deleted in its entirety and replaced with the following new Chapter 239A:

- A-1 Purpose. In *Holmdel Builder's Association V. Holmdel Township*, 121 NJ 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- A. Pursuant to PL 2008, c.46, Section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), the Council on Affordable Housing (COAH) is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of a court of competent jurisdiction and have an approved spending plan may retain fees collected from non-residential development.
- B. Pursuant to the March 10, 2015 Supreme Court Order in *In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing*, 221 N.J. 1 (2015) (*Mount Laurel IV*), the Court transferred all COAH's functions, powers, and duties to the Courts. Any and all references to COAH shall mean the Courts or successor agency to COAH if such entity is established by statute.
- C. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to the Court's regulations and in accordance PL 2008, c.46, sections 8 and 32 through 38.
- A-2 Basic Requirements
- A. This Ordinance shall not become effective until approved by the Court pursuant to N.J.A.C. 5:96-5.1.
- B. The Township of Washington shall not spend development fees until the Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.
- C. This Ordinance shall be interpreted within the framework of COAH's last adopted rules on development fees, codified at N.J.A.C. 5:97-8, as same may be interpreted and applied by the Court.

## A-3 Definitions

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

“Affordable housing development” means any residential development that consists of dwelling units that are affordable to persons and families of low or moderate income within the meaning of the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301et al.) and is included in or approved pursuant to the Housing Element and Fair Share Plan, or otherwise addresses the Township’s fair share obligation. This includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable housing development.

“COAH” or the “Council” means the New Jersey Council on Affordable Housing established under the Fair Housing Act or the Courts or successor agency to COAH if such entity is established by statute.

“Development fee” means money paid by a developer for the improvement of property as permitted in Holmdel Builder’s Association v. Holmdel Township, 121 NJ 550 (1990) and in N.J.A.C. 5:93-8.

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

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

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

## A-4 Imposition of Affordable Housing Development Fees

### A. Residential Development

- (1) Within all the Township zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half percent (1.5%) of the equalized assessed value for residential development, provided that no increased density is permitted.
- (2) Where an increase in density is permitted through a variance granted pursuant to N.J.S.A. 40:55D-70d(5) or a rezoning, redevelopment plan, or redevelopment plan amendment that is adopted after the effective date of this ordinance, developers shall be required to pay a development fee of six percent (6.0%) of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include a set-aside of affordable housing units. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

#### B. Nonresidential Development

- (1) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted below, shall pay a fee equal to two and one-half percent (2.5%) of the equalized assessed value of the land and improvements for all new non-residential construction on an unimproved lot or lots, provided that no increase in floor area is permitted.
- (2) Non-residential developers, except for developers of the types of development specifically exempted below, shall pay a fee equal to two and one-half percent (2.5%) of the increase in total equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
- (3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the preexisting land and improvements and the

equalized assessed value of the newly improved structure, i.e. land and improvements, at the time the final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

- (4) Developers that convert any portion of an existing residential structure to a nonresidential use shall pay a development fee of two and one-half percent (2.5%). The development fee shall be calculated based on the increase in the equalized assessed value of the converted structure.

## A-5 Eligible Exactions, Ineligible Exactions and Exemptions

### A. Residential Development

- (1) Developers of low- and moderate-income housing shall be exempt from paying development fees, including developments where the developer is providing affordable units elsewhere in the Township or is making a payment in lieu of construction of on-site affordable housing units and further provided that the minimum number of affordable units required for the development is completed in accordance with this chapter. A payment-in-lieu-of-construction or development fee payment shall only be used to fund affordable housing activities within the Township in accordance with N.J.A.C. 5:97 or as approved by COAH or the Court.
- (2) Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The applicable development fee percentage shall be vested on the date that the building permit is issued.
- (3) Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.
- (4) Development fees shall be imposed and collected when an existing non-owner occupied residential structure is demolished and replaced. The development fee shall be

calculated on the increase in the equalized assessed value of the improved structure.

- (5) Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, which requires the issuance of a Certificate of Occupancy (for example, when a single-family home is converted to a two-family home or a single-family home is converted to an apartment building). The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- (6) Development fees shall be imposed and collected when a Certificate of Occupancy is issued for a new residential unit on a newly created lot that is the result of a subdivision. The development fee shall be calculated on the equalized assessed value of the land and improvements.
- (7) Additions to existing homes and improvements such as decks, patios and like shall be exempt from the payment of a development fee.

#### B. Nonresidential Development

- (1) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one-half percent (2.5%) development fee, unless otherwise exempted below.
- (2) The two and one-half percent (2.5%) development fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing building footprint, reconstruction, renovations and repairs.
- (3) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/ Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
- (4) A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to the development fee at such time as the basis for the exemption no longer applies, and shall

make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy for the non-residential development, whichever is later.

- (5) If a property that was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Township of Washington as a lien against the real property of the owner.
- (6) Developers that have received final approval prior to the adoption of a municipal development fee ordinance shall be exempt from paying a development fee, unless the developer seeks a substantial change in the approval.
- (7) Exempted from these provisions shall be approvals for the following classes of development:
  - (a) Utility facilities
  - (b) Educational, cultural and outdoor recreational facilities
  - (c) Quasi-public uses, including clubs, lodges and similar uses
  - (d) Public uses
  - (e) Hospital uses

#### A-6 Collection of Fees

- A. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify

the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

- C. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- D. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- E. The construction official responsible for the issuance of a final certificate of occupancy shall notify the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the Township of Washington fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- H. Fifty percent (50%) of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- I. Appeal of development fees:
  - (1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board,



collected fees shall be placed in an interest bearing escrow account by the Township of Washington. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq. within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

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

#### A-7 Affordable Housing Trust Fund

- A. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer of the Township for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- B. The following additional funds, if collected by the Township, shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
- (1) payments in lieu of construction of affordable units, shall be separately identifiable from other payments as a sub-account within the Affordable Housing Trust Fund;
  - (2) developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
  - (3) rental income from municipally operated units;
  - (4) repayments from affordable housing program loans;
  - (5) recapture funds;
  - (6) proceeds from the sale of affordable units; and,

(7) any other funds collected in connection with the Township of Washington's affordable housing program.

C. Within seven days from the opening of the trust fund account, the Township of Washington shall provide the Court with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and the Court to permit the Court to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).

D. All interest accrued in the housing trust fund shall only be used to fund eligible affordable housing activities approved by the Court.

#### A-8 Use of Funds

A. The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the housing trust fund may be used for any activity approved by the Court to address the Township of Washington's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; rehabilitation; new construction of affordable housing units and related costs; accessory apartment, market to affordable, or regional housing partnership programs; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost-saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; or, any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.

B. Funds shall not be expended to reimburse the Township of Washington for past affordable housing activities.

C. At least thirty percent (30%) of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third (1/3) of the affordability assistance portion of development fees collected shall

be used to provide affordability assistance to those households earning thirty percent (30%) or less of median income by region.

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

#### A-9 Monitoring

- A. The Township of Washington shall complete and return to the New Jersey Department of Community Affairs (NJDCA), Local Government Services, all monitoring forms required in connection with the collection of development fees from residential and non-

residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with its housing program, as well as in connection with the expenditure of revenues and implementation of the plan approved by the Court.

- B. All monitoring reports shall be completed on forms designed by the NJDCA or successor entity for that purpose.

#### A-10 Ongoing Collection of Fees

- A. The ability for the Township of Washington to impose, collect and expend development fees shall expire with the end of the repose period covered by its judgment of compliance unless the Township of Washington has filed an adopted Housing Element and Fair Share Plan with the Court or with a designated administrative entity of the State of New Jersey, has petitioned for a judgment of compliance or substantive certification, and has received approval of its development fee ordinance by the entity that will be reviewing the Housing Element and Fair Share Plan.
- B. If the Township of Washington fails to renew its ability to impose and collect development fees prior to the expiration of its judgment of compliance, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320). The Township of Washington shall not impose a development fee on a development that receives preliminary or final site plan approval after the expiration of its judgment of compliance, nor shall the Township of Washington retroactively impose a development fee on such a development. The Township of Washington shall not expend any development fees after the expiration of its judgment of compliance.

**SECTION 2.** This Ordinance shall be subject to review and recommendation by the Township of Washington Planning Board in accordance with N.J.S.A. 40:55D-26 and notice requirements of N.J.S.A. 40:55D-62.1.


**SECTION 3.** All ordinances or parts thereof that are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of their inconsistencies.


**SECTION 4.** The various parts, sections, and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the ordinance shall not be affected thereby.

**SECTION 5.** This Ordinance shall take effect immediately upon its final passage and publication as required by law and filing with the Bergen County Planning Board.

ATTEST:

APPROVED:  
TOWNSHIP COUNCIL OF THE  
TOWNSHIP OF WASHINGTON

  
\_\_\_\_\_  
Susan Witkowski,  
Township Clerk

  
\_\_\_\_\_  
Robert Bruno,  
Council President


First Reading of Township Ordinance No. 17-15

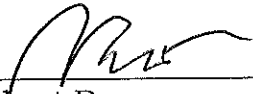
Introduction Date: August 7, 2017

MOTION		SECOND		COUNCIL	AYES	NAYES	ABSTAIN	ABSENT
Bruno		Bruno		Bruno	X			
Calamari		Calamari		Calamari	X			
Cascio	X	Cascio		Cascio	X			
Sears		Sears		Sears	X			
Ullman		Ullman	X	Ullman	X			

ATTEST:

APPROVED:  
TOWNSHIP COUNCIL OF THE  
TOWNSHIP OF WASHINGTON

  
Susan Witkowski,  
Township Clerk

  
Robert Bruno,  
Council President

Second Reading of Township Ordinance No. 17-15

Adoption Date: September 11, 2017

MOTION		SECOND		COUNCIL	AYES	NAYES	ABSTAIN	ABSENT
Bruno	X	Bruno		Bruno	X			
Calamari		Calamari	X	Calamari	X			
Cascio		Cascio		Cascio	X			
Sears		Sears		Sears	X			
Ullman		Ullman		Ullman	X			