

Introduced: 6/11/2019
Public Hearing: 7/9/2019
Adopted: 7/9/2019

ORDINANCE NO. 08-2019
TOWNSHIP OF TEWKSBURY
HUNTERDON COUNTY, NEW JERSEY

AN ORDINANCE AMENDING THE MUNICIPAL CODE, CHAPTER 15.10 AFFORDABLE HOUSING DEVELOPMENT FEE OF THE TOWNSHIP OF TEWKSBURY TO PROVIDE FOR THE COLLECTION OF DEVELOPMENT FEES IN SUPPORT OF AFFORDABLE HOUSING AS PERMITTED BY THE NEW JERSEY FAIR HOUSING ACT

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, N.J.S.A. 52:27d-301, *et seq.*, and the State constitution, subject to the adoption of Rules by the Council on Affordable Housing (COAH); and

WHEREAS, pursuant to P.L. 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 was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and correspondence spending plans.

NOW, THEREFORE BE IT ORDAINED by the Committee of the Township of Tewksbury, Hunterdon County, New Jersey, that Chapter 15.10 "Affordable Housing Development Fee" be amended as outlined on the following pages regulating the collection and disposition of development fees to be used in connection with the Township's affordable housing programs, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, *et seq.*, as amended and supplemented, N.J.A.C. 5:80-26.1, *et seq.*, as amended and supplemented, and the New Jersey Fair Housing Act of 1985.

Chapter 15.10 - AFFORDABLE HOUSING DEVELOPMENT FEE

15.10.010 Purpose.

- A. In Holmdel Builder's Association vs. 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 New Jersey Council on Affordable Housing's (COAH's) adoption of rules.
- B. Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the State-wide Nonresidential 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. Municipalities that are under the jurisdiction of the council or court of competent jurisdiction and

have a COAH-approved spending plan may retain fees collected from nonresidential development.

- C. This chapter establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this chapter shall be used for the sole purpose of providing low- and moderate-income housing. This chapter shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

15.10.020 Basic requirements.

- A. Township of Tewksbury shall not spend development fees until a plan has been approved for spending such fees.

15.10.030 Definitions.

The following terms, as used in this chapter, shall have the following meanings:

"Affordable housing development" means a development included in the housing element and fair share plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one hundred (100) percent affordable development.

"COAH" or the "council" means the New Jersey Council on Affordable Housing established under the Fair Housing Act or any successor state agency.

"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.

"Development fee" means money paid by a developer for the improvement of property as authorized by *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27d-301, *et seq.*, and regulated by applicable COAH Rules.

"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.

15.10.040 Residential development fees.

- A. Imposed fees.

1. Within all zoning district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half (1½) percent of the equalized assessed value for residential development provided no increased density is permitted.
2. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers shall be required to pay a development fee of six (6) percent 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 affordable housing. 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.

Example: If an approval allows four units to be constructed on a site that was zoned for two (2) units, the fees would equal one and a half (1½) percent of the equalized assessed value on the first two (2) units; and the specified higher percentage of six (6) percent of the equalized assessed value for the two (2) additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

B. Eligible exactions, ineligible exactions and exemptions for residential development.

1. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
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 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. Fees shall not be charged for new decks, porches or additions.

15.10.050 Nonresidential development fees.

A. Imposed fees.

1. Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2½) percent of

the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.

2. Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2½) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
 3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2½) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure, i.e., land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.
- B. Eligible exactions, ineligible exactions and exemptions for nonresidential development.
1. The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2½) percent development fee, unless otherwise exempted below.
 2. The two and a half (2½) percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 3. Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), 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 the Statewide Non-Residential Development Fee Act shall be subject to the 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 (3) years after that event or after the issuance of the final Certificate of Occupancy of the non-residential development, whichever is later.
 5. If a property which was exempted from the collection of a nonresidential 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 forty-five (45) days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances

may be enforceable by the Township of Tewksbury as a lien against the real property of the owner.

15.10.060 Collection procedures.

- 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 nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Nonresidential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the nonresidential 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 ninety (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 notifies 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 ten (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 of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the Township of Tewksbury fail to determine or notify the developer of the amount of the development fee within ten (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 (50) percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected prior to 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 Tewksbury. 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 ninety (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 nonresidential 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 forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Township of Tewksbury. 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 ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

15.10.070 Affordable housing trust fund.

- A. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.
- B. The following additional funds 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 on-site construction of affordable units and fractional payments in lieu;
 2. Developer contributed funds to make ten (10) percent 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 Tewksbury Township's Affordable Housing Program.
- C. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities.

15.10.080 Use of funds.

- A. The expenditure of all funds shall conform to an approved spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any approved activity to address the Township of Tewksbury'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 apartments, a market to affordable program, or regional housing partnership programs, conversion of existing nonresidential 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 permitted activity as specified in the approved spending plan.
- B. Funds shall not be expended to reimburse the Township of Tewksbury for past housing activities.
- C. At least thirty (30) percent 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 of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty (30) percent 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 homeowners association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described in the spending plan.
 - 2. Affordability assistance to households earning thirty (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 thirty (30) percent or less of median income. The specific programs to be used for very low-income affordability assistance shall be identified and described within the spending plan.
 - 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 Tewksbury 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.
- E. No more than twenty (20) percent 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 administer an affirmative marketing program or a rehabilitation program.

1. In the case of a rehabilitation program, no more than twenty (20) percent of the revenues collected from development fees shall be expended for such administrative expenses.
2. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or securing a judgment from the court are not eligible uses of the affordable housing trust fund.

15.10.090 Monitoring.

The Township of Tewksbury shall complete and return to the Department of Community Affairs all monitoring forms included in monitoring requirements related to the collection of development fees from residential and nonresidential 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 the Township of Tewksbury's housing program, as well as to the expenditure of revenues and implementation of the plan.

15.10.0100 Ongoing collection of fees.

The ability for the Township of Tewksbury to impose, collect and expend development fees shall expire with its substantive unless the Tewksbury Township has filed an adopted housing element and fair share plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance or, in the alternative, sought approval of the housing plan and development fee ordinance from the court. If the Township of Tewksbury fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, 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 Tewksbury shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall the Township of Tewksbury retroactively impose a development fee on such a development. The Township of Tewksbury shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

If any section, paragraph, subsection, clause or provision of this ordinance shall be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of this ordinance as a whole or any part thereof.

All ordinances or parts of ordinances of the Township heretofore adopted that are inconsistent with any of the terms and provisions of this ordinance are hereby repealed to the extent of such inconsistency.

BE IT FURTHER ORDAINED by the Tewksbury Township Committee that this ordinance shall take effect immediately upon publication following final passage and the filing of a copy hereof with the Hunterdon County Planning Board and the Highlands Council.

NOTICE

NOTICE is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Committee of the Township of Tewksbury held on June 11, 2019, and ordered published in accordance with the law. Said Ordinance will be considered for final reading and adoption at a regular meeting of the Township Committee to be held on July 9, 2019 at 7:30 p.m. or as soon thereafter as the Township Committee may hear this Ordinance at the Municipal Building, 169 Old Turnpike Road, Califon, New Jersey, at which time all persons interested may appear for or against the passage of said Ordinance.

Adopted:

William Voyce, Mayor
Township Committee

Attest:

Jennifer Ader
Acting Municipal Clerk