

ORDINANCE NO. 36-2009

**AN ORDINANCE OF THE TOWNSHIP OF HARRISON, COUNTY OF
GLOUCESTER AND STATE OF NEW JERSEY AMENDING THE
AFFORDABLE HOUSING DEVELOPMENT FEE PROVISIONS OF
CHAPTER 110 "FEES" OF THE TOWNSHIP CODE**

BE IT ORDAINED by the Township Committee of the Township of Harrison, in Gloucester County, New Jersey, that the "Code of the Township of Harrison" ("Code") is hereby amended as follows:

Section 1. Article III "COAH Fees" of Chapter 110 "Fees" Repealed and Replaced. Article III "COAH Fees" of Chapter 110 "Fees" of the Code is hereby deleted in its entirety and replaced with a new Article III "Affordable Housing Development Fees," which shall read as follows:

ARTICLE III. AFFORDABLE HOUSING DEVELOPMENT FEES

10-17. Development Fees.

a. Purpose.

1. 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.
2. Pursuant to P.L.2008, c.46 section 8 (N.J.S.A. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (N.J.S.A. 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 non-residential development.
3. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance with P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

b. Basic Requirements.

1. This ordinance shall not be effective until approved by COAH pursuant to *N.J.A.C. 5:96-5.1*.
2. The Township shall not spend development fees until COAH 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. Definitions.

1. As used herein, the following terms shall have the following meanings:
 - (a) "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 100% affordable development.
 - (b) "COAH" or the "Council" means the New Jersey Council on Affordable Housing established under the Act that has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State.
 - (c) "Development fee" means money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:97-8.3*.
 - (d) "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.
 - (e) "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 (N.J.S.A. 54:1-35a through N.J.S.A. 54:1-35c).
 - (f) "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.

d. Residential Development Fees.

1. Imposed fees.

- (a) Within all zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a residential development fee of one and one-half percent (1.5%) of the equalized assessed value of land and improvements, provided no increased density is permitted.
- (b) 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 one and one-half percent (1.5%) of the equalized assessed value of the initial "by-right" number of units and six percent (6.0%) of the equalized assessed value for each additional unit that may be realized. 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 units, the fees shall equal one and a half percent (1.5%) of the equalized assessed value on the first two units, and six percent (6.0%) of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

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

- (a) 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.
- (b) Developments that have received preliminary or final site plan approval prior to the adoption of the Township's first 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.
- (c) Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is

demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

(1) A change to a more intense use shall include, but not be limited to, the conversion of unfinished basement, attic and/or garage spaces to habitable space.

(2) *Exemption.* Any change to a more intense use, replacement or expansion of an existing structure that does not result in an increase to the equalized assessed value of the improved structure by greater than \$19,999 shall be exempt from the development fee requirements of this Section.

(3) *Exemption.* Developers of residential structures demolished and replaced with a substantially similar residence, as a result of an accidental fire or natural disaster, shall be exempt from paying a development fee.

e. Non-Residential Development Fees.

1. Imposed fees.

(a) Pursuant to the provisions of P.L. 2008, c. 46, within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, 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.

(b) Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half percent (2.5%) of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.

(c) 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 pre-existing land and improvement and the equalized assessed value of the newly improved structure, *i.e.* land and improvement, at the time the 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.

2. Eligible exactions, ineligible exactions and exemptions for non-residential development.

- (a) 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.
- (b) The two and one-half percent (2.5%) fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- (c) 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 said statute may from time to time be amended, and as specified in 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.
- (d) 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 it at such time 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 of the non-residential development, whichever is later.
- (e) If a property which 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 non-residential development fees under these circumstances may be enforceable by the Township as a lien against the real property of the owner.

f. Collection Procedures.

1. Upon the granting of a preliminary, final or other applicable approval for a development, the appropriate approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
2. For non-residential developments, the developer shall be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" for completion. The developer shall complete fully Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the developer. The Township Tax Assessor shall then verify any exemptions claimed and prepare estimated and final assessments in accordance with the instructions provided on Form N-RDF.

3. For all development:
 - (a) The construction official responsible for the issuance of a building permit shall notify the Township Tax Assessor of the issuance of the first building permit for a development that is subject to a development fee.
 - (b) Within 90 days of receipt of said notice, the Township Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
 - (c) The construction official responsible for the issuance of a final certificate of occupancy shall notify the Township Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
 - (d) Within 10 business days of a request for the scheduling of a final inspection, the Township Tax 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.
 - (e) Should the Township 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 (N.J.S.A. 40:55D-8.6).
4. Payment of development fees. Fifty (50%) percent of the estimated development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be assessed and collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying any difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
5. Appeal of development fees.
 - (a) 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. 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, N.J.S.A. 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.

- (b) 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. 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, N.J.S.A. 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.

g. Affordable Housing Trust Fund.

1. The Township shall create and/or continue to maintain a separate, interest-bearing affordable housing trust fund that is maintained by the Township Chief Financial Officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
2. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (a) Payments in lieu of on-site construction of affordable units.
 - (b) Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible.
 - (c) Rental income from municipally operated units.
 - (d) Repayments from affordable housing program loans.
 - (e) Recapture funds.
 - (f) Proceeds from the sale of affordable units.
 - (g) Any other funds collected in connection with the Township's affordable housing program.
3. Within seven days from the opening of the trust fund account, the Township shall provide COAH with written authorization, in the form of a three-party escrow agreement between the Township, the bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
4. All interest accrued in the affordable housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

h. Use Of Funds.

1. The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the affordable housing trust fund may be used for any activity approved by COAH to address the Township'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.
2. Funds shall not be expended to reimburse the Township for past housing activities.
3. At least 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 Township's 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 30 percent or less of median income by region.
 - (a) 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.
 - (b) 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 Township's Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
 - (c) 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.
4. The Township 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.

5. No more than 20 percent of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for Township 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 20 percent 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 COAH'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.
 - i. **Monitoring.** The Township shall complete and return to COAH all monitoring forms included in monitoring requirements related to 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 the Township's affordable housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.
 - j. **Ongoing Collection Of Fees.** The Township's ability to impose, collect and expend development fees shall expire with its substantive certification unless the 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. If the Township 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 affordable housing 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 (N.J.S.A. 52:27D-320). The Township 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 retroactively impose a development fee on such a development. The Township shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

Section 2. NRDF Provisions. This ordinance and the provisions set forth in Section 1 above is being adopted in accordance with the policies, procedures and requirements of the New Jersey Council on Affordable Housing. Pursuant to COAH's requirements for approval of a municipal development fee ordinance and the model ordinance promulgated by COAH, the Township is required to, and has, included provisions for the assessment and collection of non-

residential development fees ("NRDF"). Notwithstanding the inclusion of such provisions as required by COAH, the Township notes and acknowledges the following legislative enactments that impact upon the collection of the NRDF:

- A. Sections 32 through 38 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.1 through 40:55D-8.7), known as the "Statewide Non-residential Development Fee Act," preempts and voids any provision of a local ordinance which imposes a fee for the development of affordable housing upon a developer of non-residential property, including any and all development fee ordinances adopted in accordance with any regulations of the Council on Affordable Housing. [*see* N.J.S.A. 40:55D-8.7a].
- B. Sections 36 through 41 of P.L. 2009, c. 90, known as the "Economic Stimulus Act of 2009," in relevant part, suspends the NRDF imposed by the Statewide Non-residential Development Fee Act, and in particular, provides that the imposition of such fee upon the developer of non-residential property shall not apply to non-residential property for which preliminary or final site plan approval, or capital project review pursuant to N.J.S.A. 40:55D-31, was obtained prior to July 1, 2010, provided that a permit for the construction of the building has been issued by the local enforcing agency prior to January 1, 2013.
- C. As such, the Township shall continue to assess and collect any NRDF in accordance with all applicable laws.

Section 3. Repealer. All ordinances or Code provisions or parts thereof inconsistent with this Ordinance are hereby repealed.

Section 4. Severability. If any portion of this ordinance is found to be invalid for any reason by any court of competent jurisdiction, such judgment shall be limited in its effect only to that portion of the ordinance actually invalidated and shall not be deemed to affect the operation of any other portion thereof.

Section 5. Effective Date. This ordinance shall take effect upon its approval by the New Jersey Council on Affordable Housing pursuant to *N.J.A.C. 5:96-5.1*, and its passage and publication, as required by law.

INTRODUCED: November 16, 2009

ADOPTED:

TOWNSHIP OF HARRISON

LOUIS F. MANZO, MAYOR

ATTEST:

DIANE L. MALLOY, ACTING MUNICIPAL CLERK

ROLL CALL VOTE				
COMMITTEE MEMBER	AYES	NAYS	ABSTAIN	ABSENT
Clowney				
Heim				
Manzo				
Trunk				
Woods				

NOTICE

The Ordinance published herein was introduced and passed upon first reading at a meeting of the Township Committee of the Township of Harrison, in the County of Gloucester and State of New Jersey, held on the 16th day of November, 2009. It will be further considered for final passage, after public hearing thereon, at a meeting of the Township Committee to be held at the Harrison Township Municipal Building, 114 Bridgeton Pike, Mullica Hill, New Jersey, on December 7, 2009, at 7:30 p.m. During the week prior and up to and including the date of such meeting, copies of said ordinance will be made available at the Township Clerk's Office at the Municipal Building, 114 Bridgeton Pike, in the Township, to the members of the general public who shall request same.

DIANE L. MALLOY
ACTING MUNICIPAL CLERK