

ORDINANCE O-23-07

**DEVELOPMENT FEE ORDINANCE
OF THE TOWNSHIP OF FRANKLIN**

1. Purpose

- (a) 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 New Jersey Council on Affordable Housing's (COAH).. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's rules. 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.

2. Basic Requirements

- (a) The Township of Franklin shall not impose development fees on any applicant pursuant to this ordinance until COAH or a Court has approved the Development Fee Ordinance.
- (b) The Township of Franklin shall not spend development fees until COAH or a Court has approved a plan for spending such fees and the Township of Franklin has received third round substantive certification from COAH or a judgment of compliance or until COAH or a Court authorizes the expenditure..

3. Definitions

- (a) The following terms, as used in this ordinance, shall have the following meanings:
 - i. "Affordable housing development" means a development that includes affordable housing that is properly restricted to render it eligible for credits under applicable COAH regulations.
 - ii. "COAH" means the New Jersey Council on Affordable Housing.
 - iii. "Development fee" means funds paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules.
 - iv. "Equalized assessed value" means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of issuance of a building permit may be obtained utilizing estimates for construction cost. Final equalized assessed value shall be determined at project completion by the municipal tax assessor.

4. Residential Development Fees

- (a) Within the Township of Franklin zoning districts, residential developers shall pay a fee of .5 percent of the equalized assessed

value for residential development, or the appraised value on the document utilized for construction financing for a rental unit on any development project resulting in the creation of 1.01 or more units, 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 may be required to pay a development fee of six (6) percent of the equalized assessed value for residential development for each additional for-sale unit, or the appraised value on the document utilized for construction financing for each additional rental unit.

Example: If an approval allows four units to be constructed on a site that was zoned for two units and if all units were for sale, the fees could equal two percent of the equalized assessed value for residential development for the first two units; and six percent of the equalized assessed value for residential development for the two additional units. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the density for 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.

5. Non-Residential Development Fees

- (a) Within the non-residential zoning districts, non-residential developers shall pay a fee of one (1) percent of the appraised value on the document utilized for construction financing.
- (b) If an increase in floor area ratio is approved pursuant to N.J.S.A. 40:55D-70d(4), then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six percent of the appraised value on the document utilized for construction financing. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two-year period preceding the filing of the variance application.

6. Eligible Exactions, Ineligible Exactions and Exemptions

- (a). Developers of low- and moderate-income units shall be exempt from the payment of development fees on units developed within, and as part of, an approved inclusionary project.
- (b). Developers that engage in new development shall pay a development fee, with the following exemptions:
 - (1) Affordable housing developments shall be exempt from development fees.
 - (2) Developments that have received preliminary or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a substantial change in the approval, or said approval expires without an extension granted by the respective review board.
 - (3) The expansion or addition to an existing single family dwelling, including in-law apartments.
 - (4) Structural alterations that do not increase gross floor area of a building or structure or increase the equalized assessed value of a property.

- (5) Nonprofit organizations which have received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the Municipal Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges.
- (6) Federal, state, county and local governments
- (c). In the case of single-family development, any new residential construction, which has been created as part of a on-site residential demolition permit is exempt from development fees.
- (d) Development fees shall be imposed and collected when an existing structure is expanded or undergoes a change to a more intense use. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

7. Collection of Fees

- (a) Fifty percent of the development fee will be collected at the time of issuance of the building permit. The remaining portion will 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.

8. Contested Fees

- (a) Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by the Township of Franklin. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

9. Affordable Housing Trust Fund

- (a) There is hereby created a separate, interest-bearing housing trust fund in [BANK] for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls. All development fees paid by developers pursuant to this Ordinance shall be deposited into this fund.
- (b) Within seven days from the opening of the trust fund account, the Township of Franklin shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, [BANK], and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:94-6.16(b).
- (c) No funds shall be expended from the affordable housing trust fund unless the expenditure conforms to a spending plan approved by COAH. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

10. Use of Funds

- (a) Funds deposited in the housing trust fund may be used for any activity approved by COAH or a Court to address the municipal fair share. Such activities include, but are not limited to: rehabilitation,

new construction, RCAs, financial assistance designed to increase affordability, or administration necessary for implementation of a Housing Element and Fair Share Plan. The expenditure of all funds shall conform to a spending plan approved by COAH or the Court.

- (b) Funds shall not be expended to reimburse the Township of Franklin for past housing activities.
- (c) After subtracting development fees collected to finance an RCA, a rehabilitation program or a new construction project that are necessary to address the Township of Franklin's affordable housing obligation, at least 30 percent of the balance remaining 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 30 percent or less of median income by region.
 - (i) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, and rental assistance.
 - (ii) 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 third round municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall entitle the Township of Franklin to bonus credits pursuant to N.J.A.C. 5:94-4.22.
 - (iii) 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 Franklin 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. 5:94-7.
- (e) No more than 20 percent of the revenues collected from development fees each year, exclusive of the fees used to fund an RCA, shall 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 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. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees.

11. Monitoring

- (a) The Township of Franklin shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, and funds from the sale of units with extinguished

controls, and the expenditure of revenues and implementation of a Housing Element and Fair Share Plan certified by COAH *or* approved by the court. All monitoring reports shall be completed on forms designed by COAH.

12. Ongoing Collection of Fees

(a) The ability of the Township of Franklin to impose, collect and expend development fees shall expire with its substantive certification or judgment of compliance unless the Township of Franklin has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned COAH for substantive certification or brought a declaratory relief action in Court pursuant to N.J.S.A.52:27D-313 and has received approval of its development fee ordinance by COAH or a Court. If the Township of Franklin fails to renew its ability to impose and collect development fees,, it may resume the imposition and collection of development fees only by complying with the requirements of N.J.A.C. 5:94-6 or such other regulations as may apply. The Township of Franklin shall not impose a development fee on a development that receives preliminary or final approval after the expiration of its substantive certification or judgment of compliance, nor shall the Township of Franklin retroactively impose a development fee on such a development. The Township of Franklin shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

NOW, THEREFORE, BE IT ORDAINED, by the Township Council and the Township of Franklin, this Ordinance shall become effective upon final passage and publication as provided by law.

ATTEST:

TOWNSHIP OF FRANKLIN

CAROL J. COULBOURN, CLERK

BY: _____
PETER SCAPELLATO, MAYOR

CERTIFICATION

I, CAROL COULBOURN, Clerk of the Township of Franklin, County of Gloucester, do hereby certify that the foregoing ordinance was introduced at a regular meeting of the Township of Franklin held on November 27, 2007, and thereafter duly advertised in the legal newspaper of the Township at least 10 days prior to it being considered for final passage and adoption at a subsequent meeting to be held on December 27, 2007, at which time any person interested therein will be given an opportunity to be heard.

CAROL J. COULBOURN, Clerk