

**TOWNSHIP OF FRANKLIN  
GLOUCESTER COUNTY, NEW JERSEY**

**O-15-23**

**AN ORDINANCE REPLACING CHAPTER 138, AFFORDABLE HOUSING, ARTICLE I, DEVELOPMENT FEES, OF THE CODE OF THE TOWNSHIP OF FRANKLIN**

**WHEREAS**, in furtherance of the Supreme Court’s March 10, 2015, decision In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (the “Supreme Court Decision”), the Township of Franklin (hereinafter, the “Township”) filed a complaint for declaratory and injunctive relief seeking a judgment of compliance and repose on July 2, 2015 under Docket number GLO-L-901-15 (hereinafter the “Litigation”); and

**WHEREAS**, the Township agreed to settle the said Litigation with all parties through a negotiated Settlement Agreement (hereinafter the “Settlement Agreement”) on May 26, 2022; and

**WHEREAS**, the Settlement Agreement was approved by the Superior Court of New Jersey, Gloucester County Law Division after a Fairness Hearing and issuance of an Order dated November 2, 2022 (the “Order”); and

**WHEREAS**, as a condition of the Settlement Agreement and Order, the Township agreed to update and implement Chapter 138, Article I of the Township Code, entitled “Development Fees;” and

**WHEREAS**, the Township of Franklin Planning Board has reviewed the proposed amendment to Chapter 138 of the Township Code and has determined that the proposed amendment is consistent with the Settlement Agreement, Order, Master Plan, and the previously adopted Amended Housing Plan Element and Fair Share Plan; and

**WHEREAS**, having considered the proposed amendment to, the Township Committee concurs that the proposed amendment to Chapter 138, Article I of the Township Code, does conform to the agreed upon terms of the Agreement, the Master Plan, and the previously adopted Amended Housing Element and Fair Share Plan and will provide realistic opportunity for the construction of affordable housing units in the Township.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Committee of the Township of Franklin, in the County of Gloucester and State of New Jersey, that:

**SECTION 1.** Chapter 138, “Affordable Housing,” Article I, entitled “Development Fees,” of the Code of the Township of Franklin, be and is hereby repealed and replaced with the new text of the ordinance to read as follows:

Article I Development Fees.

§138-1. 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 (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.
- (B) Pursuant to P.L. 2008, c. 46 section 8 (N.J.S.A. 52:27D-329.2), and the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7),[1] 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) In Re: Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), also known as the Mount Laurel IV decision, the Supreme Court remanded COAH's duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from the municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 1, 2025 are under the Court's jurisdiction and are subject to approval by the Court.
- (D) This section establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L. 2008, c. 46, §§ 8 and 32 through 38. Fees collected pursuant to this section shall be used for the sole purpose of providing low- and moderate-income housing. This section shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8, and subject to approval by the Court.

#### §138-2. Basic requirements.

- (A) This section shall not be effective until approved by COAH or a Court of competent jurisdiction pursuant to N.J.A.C. 5:96-5.1.
- (B) The Township of Franklin shall not spend development fees until COAH or a Court of competent jurisdiction has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and 5:96-5.3.

#### §138-3. Definitions. The following terms, as used in this section, shall have the following meanings:

##### AFFORDABLE HOUSING DEVELOPMENT

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-percent affordable development.

##### COAH or THE COUNCIL

The New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the state.

##### DEVELOPER

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

Money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3, and N.J.A.C. 5:93-8.1.

##### EQUALIZED ASSESSED VALUE

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 §§ 1, 5, and 6 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through c).

##### GREEN BUILDING STRATEGIES

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.

#### §138-4. Residential development fees.

(A) Imposed fees.

- (1) Within all zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
- (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 6% 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.
- (3) Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees shall equal 1.5% of the equalized assessed value on the first two units; and the fees shall equal 6% 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.
- (4) Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, 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.

(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) Development fees shall be imposed and collected when an existing structure is demolished and replaced, except in the case of destruction by fire or natural disaster.
- (4) Inclusionary developments shall be exempt from paying a development fee.
- (5) Developments of educational facilities shall be exempt from paying a development fee.
- (6) Developments of houses of worship and other uses that are entitled to exemption from New Jersey real property tax shall be exempt from the payment of a development fee, provided that such development does not result in the construction of any additional housing or residential units, including assisted living and continuing care retirement communities.
- (7) Any development or improvement to structures of owner-occupied property in which there is located an affordable accessory residence. This exemption shall only apply to development or improvements to the property during the period of affordability controls.

(8) The construction of a new accessory building or other structure on the same lot as the principal building shall be exempt from the imposition of development fees if the assessed value of the structure is determined to be less than \$100,000.

(C) Collection procedures for residential development.

(1) Residential developers shall pay 100% of the calculated development fee amount prior to the issuance of a final certificate of occupancy.

(2) The fee percentage shall be based on the percentage that applies on the date building permits are issued.

(D) Appeal of residential development fees. 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 Franklin. 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.

§138-5. 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 2.5% percent of the equalized assessed value of the land and improvements, for all new nonresidential construction.

(2) Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% 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 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement 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-percent development fee, unless otherwise exempted below.

(2) The two-and-a-half-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 P.L. 2008, c. 46, as specified in the Form N-RDF State of New Jersey Nonresidential Development Certification/Exemption Form. Any exemption claimed by a developer shall be substantiated by that developer.

(4) A developer of a nonresidential development exempted from the nonresidential 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 nonresidential development fee, in that event, within three years after that event or

after the issuance of the final certificate of occupancy of the nonresidential 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 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Township of Franklin as a lien against the real property of the owner.

(C) Collection procedures for nonresidential development.

- (1) Upon the granting of a preliminary, final or other applicable approval, for a nonresidential development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- (2) The developer of a nonresidential development shall also be provided with a Form N-RDF, State of New Jersey Nonresidential Development Certification/Exemption, and complete 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.
- (3) 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 nonresidential development fee.
- (4) 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 nonresidential development.
- (5) 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 nonresidential development fee.
- (6) 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 of the nonresidential development; calculate the nonresidential development fee; and thereafter notify the developer of the amount of the fee.
- (7) Should the Township of Franklin fail to determine or notify the developer of the amount of the nonresidential 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 § 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).
- (8) The developer shall pay 100% of the calculated development fee amount prior to the municipal issuance of a final certificate of occupancy for the subject property.

(D) Appeal of nonresidential development fees. 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 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Township of Franklin. 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.

§138-6. Affordable Housing Trust Fund.

- (A) There was previously created a separate, interest-bearing housing trust fund that continues to be maintained by the Chief Financial Officer of the Township 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;
  - (2) Developer-contributed funds to make 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 Franklin's affordable housing program.
- (C) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

§138-7. Use of funds.

- (A) The expenditure of all funds shall conform to a spending plan approved by a Court of competent jurisdiction. Funds deposited in the housing trust fund may be used for any activity approved by a Court of competent jurisdiction to address the Township of Franklin'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 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 activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 5:97-8.9 and specified in the approved spending plan.
- (B) Funds shall not be expended to reimburse the Township of Franklin for past housing activities.
- (C) At least 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 of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 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 homeowners' association or condominium fees and special assessments, and assistance with emergency repairs.
  - (2) Affordability assistance to households earning 30% 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% 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 Franklin may contract with a private or public entity to administer any part of its Housing Plan 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 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 Plan Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 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.
- (F) Court approval of the Township's spending plan constitutes a "commitment" on the part of the Township for expenditure of funds pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions to commence in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (Aff'd 442 N.J. Super. 563).

#### §138-8. Monitoring.

On the first anniversary of the Township's Judgment of Compliance and Repose, and on every anniversary of that date thereafter through July 1, 2025, the Township agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

#### §138-9. Ongoing collection of fees.

The ability for the Township of Franklin to impose, collect and expend development fees shall expire with its judgment of compliance unless the Township of Franklin has filed an adopted Housing Plan Element and Fair Share Plan with the Court, has petitioned for substantive certification, and has received the Court's approval of its development fee ordinance. If the Township of Franklin fails to renew its ability to impose and collect development fees prior to the expiration of 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 § 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320). The Township of Franklin 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 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.

#### §138-10. Reserved

**SECTION 2.** This Ordinance shall be in full force and effect from and after its adoption and any publication as required by law.

**SECTION 3.** All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

**SECTION 4.** Upon adoption of this Ordinance after public hearing thereon, the Township Clerk is further directed to publish notice of the passage thereof and to file a copy of this Ordinance with the County Planning Board, the Pinelands Commission and other agencies as required by law.

**SECTION 6.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 7.** This Ordinance shall take effect upon final passage and publication according to law.

Attest: Township of Franklin

\_\_\_\_\_  
Barbara Freijomil, Clerk

\_\_\_\_\_  
John Bruno, Mayor

**CERTIFICATION**

I, Barbara Freijomil, Clerk of the Township of Franklin, County of Gloucester, do here certify that the foregoing Ordinance was introduced at the Regular Meeting of the Township of Franklin held on July 11, 2023 and thereafter duly advertised in the legal newspaper of the Township at least seven (7) days prior to it being considered for final passage and adoption at a subsequent meeting to be held on August 8, 2023 at which time any person interested therein will be given an opportunity to be heard.

\_\_\_\_\_  
Barbara Freijomil, Municipal Clerk

Introduced July 11, 2023

<b>Name</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
<b>Doyle</b>						
<b>Flaim</b>						
<b>Keen</b>						
<b>Marsh</b>						
<b>Bruno</b>						

Adopted August 8, 2023

<b>Name</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
<b>Doyle</b>						
<b>Flaim</b>						
<b>Keen</b>						
<b>Marsh</b>						
<b>Bruno</b>						