

INTRO: 12/8/2008  
ADOPTED: 12/29/2008

**TOWNSHIP OF FAIRFIELD  
ORDINANCE #2008-19**

**AN ORDINANCE AMENDING CHAPTER 45-74 OF THE CODE OF THE  
TOWNSHIP OF FAIRFIELD RELATING TO AFFORDABLE HOUSING  
DEVELOPMENT FEES OF THE TOWNSHIP OF FAIRFIELD**

WHEREAS, the Supreme Court of the State of New Jersey, in Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), 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 rules adopted by the New Jersey Council on Affordable Housing (COAH);

WHEREAS, the Legislature enacted legislation in 2008 relating to development fees;

WHEREAS, pursuant to this legislation, 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 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;

WHEREAS, municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have an approved spending plan may retain fees collected from non-residential development;

WHEREAS, the Mayor and Council of the Township of Fairfield desire to collect, maintain and disburse development fees as permitted under the statutes and regulations of the State of New Jersey;

WHEREAS, 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.

NOW THEREFORE BE IT ORDAINED by the Governing Body of the Township of Fairfield that it does hereby amend Chapter XLV Zoning Ordinance, Section 74 of the Township of Fairfield as follows:

SECTION 1: The entire Section 45-74 shall be stricken and amended to read as follows:

**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 rules adopted by the New Jersey Council on Affordable Housing's (COAH).
- (b) 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 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 an approved spending plan may retain fees collected from non-residential development.
- (c) 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.

## **2. Basic Requirements**

- (a) The Township of Fairfield shall not impose development fees on any applicant pursuant to this ordinance until COAH or a Court has approved the Development Fee Ordinance pursuant to N.J.A.C. 5:96-5.1, except that residential fees may be collected pursuant to the previously approved fee ordinance until such time as this ordinance takes effect, and non-residential fees shall be collected in accordance with the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq.
- (b) The Township of Fairfield shall not spend development fees until COAH or a 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.

## **3. Definitions**

- (a) The following terms, as used in this ordinance, shall have the following meanings:
  - i. "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 percent affordable development.

- ii. “COAH” or the “Council” means 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 considerations in the State.
- iii. “Development fee” means money paid by a developer for the improvement of property as permitted under N.J.A.C. 5:97-8.3.
- iv. “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.
- v. “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).
- vi. “Green building strategies” means those strategies that minimize the impact of development on the environment, and enhance 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.

#### **4. Residential Development Fees**

##### **(a) Imposed Fees**

- i. Within all zoning districts in the Township of Fairfield, 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 no increased density is permitted.
- ii. 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 percent (6%) of the equalized assessed value (EAV) for each additional unit above that permitted by right which 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 could equal one and a half percent of the equalized assessed value on the first two units; and the specified higher percentage up to six percent 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.

- (b) Eligible exactions, ineligible exactions and exemptions for residential development
- i. Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
  - ii. 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.
  - iii. 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.
  - iv. 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, shall be exempted from paying a development fee.
  - v. Federal, state, county and local governments shall be exempted from paying a development fee.

- vi. The owner of a residential unit who rebuilds when the owner's existing dwelling unit was destroyed due to fire, flood or other natural disaster shall be exempt from paying a development fee.

## **5. Non-Residential Development Fees**

### **(a) Imposed fees**

- i. 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.
- ii. 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.
- iii. 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 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.

### **(b) Eligible exactions, ineligible exactions and exemptions for non-residential development**

- i. 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.
- ii. The 2.5 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.
- iii. Non-residential developments shall be exempt from 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.

- iv. 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.
- v. 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 of Fairfield as a lien against the real property of the owner.

## **6. Collection procedure**

- (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 Township’s 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 of the development; calculate the development fee, and thereafter notify the developer of the amount of the fee.
- (g) Should the Township of Fairfield 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 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 Fairfield. 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 Fairfield. 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.

## **7. Affordable Housing Trust Fund**

- (a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Township's 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.
- (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 ten percent (10%) of the affordable 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 Fairfield's affordable housing program.
- (c) Within seven days from the opening of the trust fund account, the Township of Fairfield shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the Township's banking institution, 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).
- (d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH or the Court.

## **8. Use of Funds**

- (a) The expenditure of all funds shall conform to a spending plan approved by COAH or the Court. Funds deposited in the housing trust fund may be used for any activity approved by COAH or the Court to address the Township of Fairfield'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 Fairfield for past housing activities.
- (c) 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 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, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
  - 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 municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
  - 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 Fairfield 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 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 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.

## **9. Monitoring**

- (a) The Township of Fairfield 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 barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Township of Fairfield's housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court. All monitoring reports shall be completed on forms designed by COAH.

## **10. Ongoing Collection of Fees**

- (a) The ability of the Township of Fairfield to impose, collect and expend development fees shall expire with its substantive certification or judgment of compliance unless the Township of Fairfield 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 Fairfield fails to renew its ability to impose and collect development fees prior to the expiration of its substantive certification or 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 Fairfield 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 its

judgment of compliance, nor shall the Township of Fairfield retroactively impose a development fee on such a development.

- (b) The Township of Fairfield shall not expend development fees after the expiration of its substantive certification or its judgment of compliance.

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

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JAMES GASPARINI  
MAYOR

ATTEST:

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DENISE D. CAFONE  
MUNICIPAL CLERK

**"NOTICE"**

"NOTICE is hereby given that the foregoing Ordinance was introduced and passed upon First Reading at a Meeting of the Mayor and Council of the Township of Fairfield on **DECEMBER 8, 2008**. Said ordinance shall have a second Reading and Public Hearing and be considered for final adoption at a meeting of said Governing Body to be held on **DECEMBER 29, 2008** starting at 7:00 p.m. in the Township Municipal Building, 230 Fairfield Road, Fairfield, N.J.

Denise D. Cafone  
Municipal Clerk

**ORDINANCE NO. 2008-19, AN ORDINANCE AMENDING CHAPTER 45-74 OF  
THE CODE OF THE TOWNSHIP OF FAIRFIELD RELATING TO  
AFFORDABLE HOUSING DEVELOPMENT FEES OF THE TOWNSHIP OF  
FAIRFIELD**

**FIRST READING, DECEMBER 8, 2008**

<b>INTRODUCED BY:</b>	<b>COUNCILMAN CONNINGTON</b>
<b>SECONDED BY:</b>	<b>COUNCILMAN LAFORGIA</b>
<b>DATE PUBLISHED:</b>	<b>DECEMBER 11, 2008</b>

**2<sup>ND</sup> READING AND PUBLIC HEARING:                    DECEMBER 29, 2008**

**ROLL CALL VOTE**

<b>GOVERNING BODY</b>	<b>AYES</b>	<b>NAYS</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
<b>COUNCIL PRESIDENT RICHARD MASTRANGELO</b>	<b>X</b>			
<b>COUNCILMAN JAMES GASPARINI</b>	<b>X</b>			
<b>COUNCILMAN JOHN LAFORGIA</b>	<b>X</b>			
<b>COUNCILMAN MICHAEL MCGLYNN</b>	<b>X</b>			
<b>MAYOR ROCCO PALMIERI</b>	<b>X</b>			

**2ND READING AND PUBLIC HEARING, DECEMBER 29, 2008**

**INTRODUCED BY:                    COUNCILMAN MCGLYNN**

**SECONDED BY                    COUNCILMAN LAFORGIA**

**DATE PUBLISHED:                JANUARY 3, 2008**

**ROLL CALL VOTE**

<b>GOVERNING BODY</b>	<b>AYES</b>	<b>NAYS</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
<b>COUNCIL PRESIDENT RICHARD MASTRANGELO</b>	<b>X</b>			
<b>COUNCILMAN JAMES GASPARINI</b>	<b>X</b>			
<b>COUNCILMAN (2) JOHN LAFORGIA</b>	<b>X</b>			
<b>COUNCILMAN (1) MICHAEL MCGYLN</b>	<b>X</b>			
<b>MAYOR ROCCO PALMIERI</b>	<b>X</b>			