

**Township of Haddon  
County of Camden**

**NOTICE OF INTRODUCTION**

**ORDINANCE #1423**

**AN ORDINANCE OF THE TOWNSHIP OF HADDON, COUNTY OF  
CAMDEN AND STATE OF NEW JERSEY, AMENDING PART II,  
CHAPTER 142, ARTICLE V, § 142-50 OF THE CODE OF THE  
TOWNSHIP OF HADDON, TO FACILITATE ITS ABILITY TO COLLECT  
AND DISBURSE DULY IMPOSED DEVELOPMENT FEES**

**WHEREAS**, the New Jersey Supreme Court and New Jersey Legislature have recognized and mandated in So. Burl. Co. NAACP v. Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II) and the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. ("FHA") that every municipality in New Jersey has an affirmative obligation to facilitate the provision of low and moderate income housing; and

**WHEREAS**, the Township Commission of the Township of Haddon is desirous of ensuring the proper implementation of the Fair Housing Act and associated rules through the adoption of affordable housing regulations by the governing body; and

**WHEREAS**, the Township of Haddon seeks to implement policies established by the New Jersey Supreme Court in In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mount Laurel IV) to foster affordable housing opportunities for the production of dwellings and their occupancy by low- and moderate-income households; and

**WHEREAS**, the Mayor and Township Commissioners recognize the need to adopt provisions for affordable housing within the Land Use and Development Ordinance of the Township of Haddon to implement any duly adopted and endorsed Housing Element and Fair Share Plan; and

**WHEREAS**, the Township did on September 27, 2011, adopt Ordinance no. 1277, now incorporated into the Code of the Township of Haddon as Part II, Chapter 142, Article V, § 142-50, entitled "Housing Development Fee", which had previously been approved by the Court, which enabled the Township to collect certain fees on residential and non-residential developments; and

**WHEREAS**, the Township Commission wishes to update Part II, Chapter 142, Article V, § 142-50, to comply with recent law and Court decisions.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Commission of the Township of Haddon, Camden County, New Jersey, as follows:

**Section 1.** Part II, Chapter 142, Article V, § 142-50, "Housing Development Fee", is hereby amended as follows (deletions are indicated by ~~strikethroughs~~; additions and changes are indicated as **bold text**):

**§ 142-50. Housing Development Fee**

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. 52:2D-301 *et seq.*, and the State

Constitution, subject to the Council on Affordable Housing's (COAH) adoption of rules.

2. Pursuant to P.L. 2008, c. 46, Section 8 (N.J.S.A. 52:2D-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-Court~~-approved spending plan may retain fees collected from non-residential development.
3. This section 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 **and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7)**. Fees collected pursuant to this Section shall be used for the sole purpose of providing **very low-**, low- and moderate-income housing **in accordance with a Court-approved Spending Plan**. This section 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 section shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1.~~ **COAH had previously approved the Township's development fee ordinance, which ordinance established the Township's Affordable Housing Trust Fund. The Township's development fee ordinance remains effective and is amended herein pursuant to the Superior Court's jurisdiction in accordance with N.J.A.C. 5:93-8.**
2. Haddon Township shall not spend development fees until ~~COAH~~ **the Court** has approved a plan for spending such fees in conformance with ~~N.J.A.C. 5:97-9.10 and N.J.A.C. 5:96-5.3~~ **N.J.A.C. 5:93-8**.

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

**AFFORDABLE HOUSING DEVELOPMENT** — A development included in a duly adopted 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.

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

**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.

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 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.**
- b. When an increase in residential density is permitted pursuant to a “d” variance granted under N.J.S.A. 40:55D-70d(5), developers may be required to pay a development fee of 6.0% of the equalized assessed value for each additional unit that may be realized. 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 1.5% of the equalized assessed value on the first two units; and the specified higher percentage of 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.*

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, **or where specifically exempted in a redevelopment agreement or other agreement with the Township of Haddon,** shall be exempt from the payment of development fees.
- b. Developments that received preliminary or final site plan or subdivision approval prior the adoption of a municipal development fee ordinance shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the construction permit is issued.
- c. 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.
- d. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use (i.e., results in more residential units than currently exist on the site), ~~or 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.

E. Non-Residential Development Fees.

1. Imposition of fees.

- a. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 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 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 2.5% 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 improvements, at the time a 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.
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 a 2.5% development fee, unless otherwise exempted below.
  - b. The 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,~~ **the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7)**, 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,~~ **the Statewide Non-Residential Development Fee Act** shall be subject to it 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 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 of Haddon 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 applicable approving authority shall direct its staff to notify the construction code official responsible for the issuance of a building permit.
- 2. 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 **by the developer** 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.

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 that is subject to a 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 development.
5. The construction official responsible for the issuance of a final certificate of occupancy notifies the local tax assessor of any and all requests for the scheduling of a final inspection on property which is subject to a 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 development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
7. Should Haddon 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).
8. 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 time of 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.
9. Appeal ~~for~~ 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 Haddon 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 ~~Tax~~ 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 Haddon 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. ~~There is hereby created a separate, interest-bearing housing trust fund~~ **A separate, interest-bearing Affordable Housing Trust Fund has previously been established and shall continue** to be maintained by the 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 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; and
  - g. Any other funds collected in connection with Haddon Township's affordable housing program.
3. ~~Within seven days from the opening of the trust fund account, Haddon Township shall provide COAH with written authorization, in the form of a three party escrow agreement between the municipality, the bank, and COAH, to permit CAH to direct the disbursements of the funds as provided for in N.J.A.C. 5:9-8.13(b).~~
4. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by ~~COAH~~ **the Court**.
- 4. In the event of a failure by the Township of Haddon to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the Judgment of Compliance or a revocation of the Judgment of Compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in In re Tp. of Monroe, 442 NJ Super. 565 (Law Div. 2015) (aff'd 442 NJ Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (NJLGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Township of Haddon, or, if not practicable, then within the county or the housing region.**
- 5. Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the Township a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize NJLGS to direct the expenditure of funds in the trust fund or impose such other remedies as may be reasonable and appropriate to the circumstances.**

#### H. Use of Funds.

1. The expenditure of all funds shall conform to a Spending Plan approved by ~~COAH~~ **the Court**. Funds deposited in the housing trust fund may be used for any activity approved by ~~COAH~~ **the Court** to address ~~the~~ Haddon 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. 5:93 and Court-upheld mechanisms in N.J.A.C. 5:97 and specified in the approved spending plan.

2. Funds shall not be expended to reimburse Haddon Township for past housing activities.
  3. 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.
    - 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. **The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.**
    - b. Affordability assistance to households earning 30% or less of median income may include **producing very low-income units** or 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. **The specific programs to be used for very low-income affordability assistance shall be identified and described within the Spending Plan.**
    - 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. Haddon 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. 5:93-8.16.
  5. 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 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 ~~COAH's monitoring requirements~~ **the monitoring requirements spelled out in Section I, below**. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action **to appealing a judgment from the Court** are not eligible uses of the affordable housing trust fund.
- I. ~~Monitoring. Haddon Township shall complete and return to COAH 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 Haddon Township'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.~~ **Beginning on the first anniversary of the execution of the Settlement Agreement between the Township of Haddon and FSHC, which execution date is August 20, 2020, and on every anniversary thereafter through the end of the Agreement, the Township will provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs (NJDCA), Council on Affordable Housing (COAH), or Local Government Services (NJLGS), or other entity designated by the State of New Jersey, with a copy provided to FSHC and posted on the municipal website, using forms developed for this purpose by the NJDCA, COAH, or NJLGS. The reporting shall include an accounting of all**

**Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.**

- J. Ongoing Collection of Fees. The ability for Haddon Township to impose, collect and expend development fees shall expire with its substantive certification or judgment of compliance unless Haddon Township has filed an adopted Housing Element and Fair Share Plan with the Superior Court ~~or COAH~~, has filed for declaratory judgment in Superior Court ~~or petitioned COAH for substantive certification~~, and has received ~~COAH's~~ **Court** approval of its development fee ordinance. If Haddon Township 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 section 20 of P.L.1985, c.222 (N.J.S.A. 52:27D-320). Haddon 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 Haddon Township retroactively impose a development fee on such a development. Haddon Township shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

**Section 2. Repealer.** All ordinances or code provisions or parts thereof inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

**Section 3. Severability.** If any section, subsection, paragraph, sentence or any other part of this ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance.

**Section 4. Effective Date.** This ordinance shall take effect upon its passage and publication, as required by law.

**The foregoing Ordinance was introduced by the Mayor and Commissioners at the regular meeting held on August 24, 2021. This Ordinance will be considered for adoption on final reading and public hearing to be held on September 28, 2021 at 7:00 p.m. in the Meeting Room, Haddon Township Municipal Building, 135 Haddon Avenue, Westmont, New Jersey.**

**A copy of this Ordinance is available at no charge to the general public between the hours of 8:30 AM to 4:30 PM, Monday through Friday (Legal Holidays excluded), at the Office of the Township Clerk, Haddon Township Municipal Building, 135 Haddon Avenue, Westmont, New Jersey.**

**Dawn M. Pennock,  
Municipal Clerk**

**Dated:** \_\_\_\_\_