

**TOWNSHIP OF MOORESTOWN**

**ORDINANCE 9-2009**

**AN ORDINANCE AMENDING CHAPTER 158 (SUBDIVISION OF LAND)  
OF THE CODE OF THE TOWNSHIP OF MOORESTOWN TO REVISE THE  
AFFORDABLE HOUSING IMPACT FEES TO CONFORM WITH N.J.A.C. 5:97-8.3**

**WHEREAS**, the Township Council of the Township of Moorestown, a municipal corporation in the County of Burlington, State of New Jersey, finds that the public health, safety, morals, and general welfare of the community shall be promoted by the revision and amendment of the affordable housing impact fee regulations of the Township; and

**WHEREAS**, the Planning Board of the Township of Moorestown has adopted a Housing Element of the Master Plan providing for the appropriate use and development of lands in the Township in a manner which will promote the public health, safety, morals, and general welfare; and

**WHEREAS**, 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; and

**WHEREAS**, 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 a COAH-approved spending plan may retain fees collected from non-residential development.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Moorestown, in the County of Burlington as follows:

**Section 1.** Article I, Definitions, is hereby amended to add the following definitions:

**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 100 percent affordable development.

**COUNCIL ON AFFORDABLE HOUSING or COAH** - The New Jersey Council on Affordable Housing established under the Fair Housing Act of 1985 which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

**DEVELOPMENT FEE** - Money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:97-8.3*.

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.

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 (C.54:1-35a through C.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.

**Section 2.** Article VI, Mandatory Development Fees, is hereby amended to read as follows:

**§ 158-40. Purpose.**

This ordinance 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 §§32-38. 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*.

**§ 158-41. Residential development.**

- A. For any residential development, developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half percent (1.5%) percent of the equalized assessed value for residential development 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 percent (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.

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.

- C. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the

expansion is not otherwise exempt from the development fee requirement, except that expansions for single family detached and semi-detached dwellings shall not pay a fee for expansions. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

**§ 158-42. Nonresidential development.**

- A. 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 (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- B. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
- C. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a 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.

**§ 158-43. Exemptions; expansions; changes in approval.**

The following provisions shall only apply to those development fees paid into the township's housing trust fund pursuant to this Article VI (Mandatory Development Fees).

- A. 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) Residential 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. A change in an approval which requires a revised preliminary approval shall be considered to be a substantial change for the purposes of this section.
  - (3) Developments by municipal, county, and state governments and houses of worship shall be exempt from paying mandatory residential development fees pursuant to this Article.

B. Non-residential development

- (1) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half percent (2.5%) development fee, unless otherwise exempted below.
- (2) 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.
- (3) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as 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.
- (4) 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.
- (5) 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 Moorestown Township as a lien against the real property of the owner.

**§158-44. Collection of fees.**

- A. The fee percentage to be collected shall be vested on the date that the building permit is issued.
- B. 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.
- C. 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.

- D. 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.
- E. 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.
- F. The construction code official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- G. 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.
- H. Should the Township fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in *N.J.S.A. 40:55D-8.6*.
- I. Fifty percent (50%) 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.
- J. 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 Moorestown. 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 Moorestown. 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.

**§158-45. Housing Trust Fund.**

- A. Upon approval by COAH and by the Division of Local Government Services, the Township of Moorestown shall invest development fee revenue and proceeds from the sale of units with extinguished controls into the State of New Jersey Cash Management Fund, provided that the funds in the Cash Management account that comprise the deposits and income attributable to such deposits shall at all times be identifiable.
- B. The following additional funds shall be deposited in the 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 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 Moorestown's affordable housing program.
- C. Within seven days from the establishment of any housing trust fund account, the Township of Moorestown shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank linked to the Cash Management Fund, 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)*. Nothing herein shall be deemed to affect any existing affordable housing trust fund or account that has already been established pursuant to COAH procedures and requirements and approved by the state agency.

**§158-46. Use of funds.**

- A. The Township of Moorestown shall not spend development fees until COAH has approved a plan for spending such fees in conformance with *N.J.A.C. 5:97-8.10* and *N.J.A.C. 5:96-5.3*.
- B. The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address Moorestown'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.

- C. Funds shall not be expended to reimburse Moorestown for past housing activities.
- D. At least thirty percent (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 thirty percent (30%) or less of median income by region. 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.
- E. Affordability assistance to households earning thirty percent (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 thirty percent (30%) or less of median income.
- F. 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.
- G. Moorestown 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*.
- H. No more than twenty percent (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 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.
- I. Ongoing collection of fees. The ability for the Township of Moorestown to impose, collect and expend development fees shall expire with its substantive certification unless the municipality has filed an adopted Housing Element and Fair Share Plan with COAH,

has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If Township of Moorestown fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to *N.J.S.A. 52:27D-320*. Township of Moorestown 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 municipality retroactively impose a development fee on such a development. Township of Moorestown shall not expend development fees after the expiration of its substantive certification.

### **§158-47. Monitoring**

The Township of Moorestown shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with Moorestown's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

**Section 3.** Continuation. In all other respects the Moorestown Code of Ordinances, as amended and supplemented, shall remain in full force and effect.

**Section 4.** Severability. If any portion of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole, or any other part thereof. Any invalidation shall be confined in its operation to the section, paragraph, sentence, clause, phrase, term, or provision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

**Section 5.** Interpretation. If the terms of this Ordinance shall be in conflict with those of another Ordinance of the Code of the Township of Moorestown, then the restriction which imposes the greater limitation shall be enforced.

**Section 6.** Repealer. All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency only.

**Section 7.** Enactment. This ordinance shall not be effective until approved by the New Jersey Council on Affordable Housing pursuant to *N.J.A.C. 5:96-5.1* and upon the filing thereof with the Burlington County Planning Board after final passage, adoption, and publication by the Township Council of the Township of Moorestown in the manner prescribed by law and shall be cited as Ordinance 9-2009.

## NOTICE

The ordinance published herewith was introduced and passed upon first reading at a meeting of the Township Council of the Township of Moorestown, County of Burlington, State of New Jersey, held on May 18, 2009. This ordinance will be further considered for final passage by the Township Council at a meeting to be held in the William Allen Middle School, 801 North Stanwick Road, Moorestown, NJ on June 8, 2009 at 7:30 pm or at any time and place to which such meeting may be adjourned. All persons interested will be given the opportunity to be heard concerning such ordinance. During the week prior to and including the date of such further consideration, copies will be made available at the Municipal Clerk's Office in said Municipal Building to any member of the general public who shall request such copies.

Patricia L. Hunt, RMC  
Township Clerk