

**BOROUGH OF HADDON HEIGHTS**

**ORDINANCE 2023:1533**

**ORDINANCE OF THE BOROUGH OF HADDON HEIGHTS  
AMENDING ARTICLE XXV OF THE ZONING AND LAND DEVELOPMENT CODE  
TO ADD A NEW SECTION 450-164.1 ENTITLED "AFFORDABLE HOUSING  
DEVELOPMENT FEES"**

**WHEREAS**, Haddon Heights Borough has set forth a plan to comply with its *Mount Laurel* affordable housing obligations, which plan is summarized and memorialized in the Settlement Agreement dated October 20, 2016 between Haddon Heights Borough and Fair Share Housing Center, and approved by Court Order dated December 16, 2016; and

**WHEREAS**, the Housing Element and Fair Share Plan adopted by the Planning Board and endorsed by Borough Council in 2016 anticipated the adoption of a mandatory affordable housing development fee ordinance, to enable the Borough to collect development fees as authorized by the Fair Housing Act, which will be deposited into an Affordable Housing Trust Fund; which will be expended in support of the production and retention of affordable housing; and

**WHEREAS**, the Borough strives to enact land use regulations that are consistent with current affordable housing rules and regulations and that advance the Borough's housing goals and objectives as set forth in the Housing Element and Fair Share Plan and that facilitate the production of affordable housing in satisfaction of the Borough's obligations under the Fair Housing Act.

**NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED** by the Borough Council of the Borough of Haddon Heights, County of Camden, State of New Jersey as follows:

**SECTION I. Add a new section Section 450-164.1 "Affordable Housing Development Fees" as follows.**

**Section 450-164.1 Affordable Housing Development Fees**

**A. Short Title.** This section of the Haddon Heights Borough Code shall be known and may be cited as the Mandatory Development Fee Ordinance or the Affordable Housing Development Fee Ordinance of the Borough of Haddon Heights.

**B. 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. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.

2. 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 was 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 COAH or a Court of competent jurisdiction and have a COAH-approved or Court-approved spending plan may retain fees collected from non-residential development.
3. 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 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.
4. 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, Sections 8 and 32-38. Fees collected pursuant to this section shall be used for the sole purpose of providing and supporting 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. 5:93-8.

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

1. **"Affordable housing development"** means a development included in the Borough's Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project, or a 100 percent affordable development.
2. **"COAH"** or the **"Council"** means the New Jersey Council on Affordable Housing established under the Fair Housing Act which previously had primary jurisdiction over the administration of housing obligations in accordance with sound regional planning consideration in the State. Pursuant to the Executive Reorganization Act of 1969, P.L. 1969, c. 203 (C. 52:14C-1 et seq.), the Governor abolished the Council and transferred all functions, powers, and duties to the Commissioner of the Department of Community Affairs, effective August 29, 2011. As such, any and all references to COAH shall mean the Department.
3. **"Development fee"** means money paid by a developer for the improvement of property and in support of affordable housing as permitted in N.J.A.C. 5:93-8.
4. **"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.

5. **"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). The tax assessor may estimate the equalized assessed value at the time of issuance of a building permit utilizing estimates for construction cost. Final equalized assessed value will be determined by the tax assessor at project completion.
6. **"Green building strategies"** means 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.
7. **"Housing Trust Fund"** means the interest-bearing account in which all development fees will be deposited pursuant to N.J.A.C. 5:93-8.15.
8. **"Judgement of Compliance and Repose"** means a judgement issued by the Superior Court approving a municipality's plan to satisfy its fair share obligation.

#### **D. Residential Development Fees**

1. Imposed fees
  - a. Within all residential zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half percent (1.5%) 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 (above what is permitted by the base zone) 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.
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 shall be exempt from development fees.

- b. 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.
- c. Development fees shall not be imposed on isolated single lots (infill lots) when the lot was not part of a subdivision, and when only one single-family dwelling is constructed.
- d. Residential structures demolished and replaced as a result of a fire, flood, or similar natural disaster shall be exempt from paying a development fee.

#### **E. Non-residential Development Fees**

##### **1. Imposed 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 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.

##### **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 the two and a half (2.5) percent development fee, unless otherwise exempted below.
- b. 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.
- 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, 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.
- d. 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.
- 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 Haddon Heights Borough as a lien against the real property of the owner.
- f. Religious organizations that engage in construction activity for religious purposes shall be exempt from paying development fees.

**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 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 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 which 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 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 Heights Borough 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).
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 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 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 Heights Borough. 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.
  - 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 Heights Borough. 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.

**G. Affordable Housing Trust Fund**

1. There is hereby created a separate, interest-bearing housing trust fund 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 ten percent (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 Heights Borough's affordable housing program.
3. In the event of a failure by the Borough 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 judgement of compliance or a revocation of the judgement 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 N.J. Super. 565 (Law Div 2015) (aff'd 442 N.J. Super 563); or the expenditure of funds on activities not approved by the Court or for other good cause demonstrating the unapproved use of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS) to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds, to the extent practicable, be utilized for affordable housing programs within the Borough of Haddon Heights, or, if not practicable then within the County or the Housing Region.
4. Any party may bring a motion before the Superior Court presenting evidence of such condition and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant conditions, and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.

5. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

#### **H. Use of Funds**

1. The expenditure of all funds shall conform to a spending plan approved by the Department or the Superior Court (as the case may be). Funds deposited in the housing trust fund may be used for any activity approved by the Department or Court to address Haddon Heights Borough'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. 5:93-8 and specified in the approved spending plan.
2. Funds shall not be expended to reimburse Haddon Heights Borough for past housing activities.
3. 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.
  - a. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner's association or condominium fees and special assessments, and assistance with emergency repairs.
  - b. 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.
  - 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 Heights Borough may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:94-7.
5. 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 the Department'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. Monitoring**

1. On an annual basis commencing with the first anniversary of the entry of the Order granting a Final Judgement of Compliance and Repose, Haddon Heights Borough shall provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs (DCA), COAH or Local Government Services (LGS) 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 DCA, COAH, or LGS. This reporting shall include an accounting of all trust fund activity, including 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 the Borough's housing program, as well as the expenditure of revenues and implementation of the plan approved by the Court.

**J. Ongoing Collection of Fees**

1. The ability for Haddon Heights Borough to impose, collect and expend development fees shall expire with its judgment of compliance unless Haddon Heights has filed an adopted Housing Element and Fair Share Plan with the Court, has filed a Declaratory Judgement action, and has received Court approval of its development fee ordinance. If Haddon Heights Borough 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 housing 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 Borough 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 Borough retroactively impose a development fee on such a development. The Borough shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

### SECTION III. REPEALER

Ordinances or provisions thereof inconsistent with the provisions of this Ordinance shall be and are hereby repealed to the extent of such inconsistency.

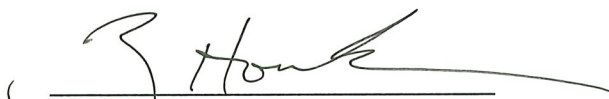
### SECTION IV. INVALIDITY

If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall only apply to the section, paragraph, subdivision, clause or provision and the remainder of this Ordinance shall be deemed valid and effective.

### SECTION V. EFFECTIVE DATE

This Ordinance shall take effect upon adoption and publication according to law and the filing of same with the Camden County Planning Board in accordance with N.J.S.A. 40:55D-16.

Introduced: SEPT. 5, 2023  
Public Hearing: SEPT. 19, 2023  
Final Adoption: SEPT. 19, 2023

  
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Mayor Zachary Houck

ATTEST:   
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Kelly Santosusso, RMC, Borough Clerk