

Ordinance No. 2302-18

ORDINANCE OF THE TOWNSHIP OF LAWRENCE, MERCER COUNTY TO REPEAL AND REPLACE SECTION 901, ENTITLED “AFFORDABLE HOUSING CONTRIBUTION”, OF THE TOWNSHIP LAND USE ORDINANCE IN ACCORDANCE WITH THE CONDITIONS AND REQUIREMENTS OF THE SUPERIOR COURT OF NEW JERSEY

NOW THEREFORE, BE IT ORDAINED by the Township Council of the Township of Lawrence, Mercer County, New Jersey, as follows:

Section 1.

§901 AFFORDABLE HOUSING CONTRIBUTION

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. 52:27d-301, et seq., and the State Constitution, subject to the Council on Affordable Housing’s (“COAH”) adoption of rules for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and spending plans.**
2. **According to P.L. 2008, c. 46 section 8 (N.J.S.A. 52:27D-329.2), and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), municipalities under the jurisdiction of COAH or a court of competent jurisdiction that had an approved spending plan were permitted to retain fees collected from non-residential development.**
3. **In In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), also known as the Mount Laurel IV decision, the Supreme Court remanded COAH’s duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from the municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 1, 2025 are under the Court’s jurisdiction and are subject to approval by the Court.**
4. **This Section establishes standards for the collection, maintenance, and expenditure of development fees consistent with 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 applicable COAH rules on development fees.**

B. Basic requirements

1. This Ordinance shall not become effective until the Court approves the Township's amended development fee ordinance and shall remain effective pursuant to the Superior Court's jurisdiction through July 1, 2025.
2. COAH approved the Township's initial Spending Plan on or about October 19, 1987, and subsequently approved a Third Round Spending Plan on or about April 2, 2009. Upon the Court's approval of Lawrence Township's 2018 Spending Plan, Lawrence Township may continue to spend development fees consistent with the approved Spending Plan.

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 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.
2. **"COAH" or the "Council"** means the New Jersey Council on Affordable Housing established under the Act.
3. **"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.
4. **"Development fee"** means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8.
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 (N.J.S.A. 54:1-35a through 54:1-35c).
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.

D. Residential Development fees

1. **Imposed fees**
 - a) Within the all district(s), 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 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 Township, 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 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.
- d) Developers of one or two-owner occupied dwelling units, residential structures demolished and replaced as a result of a natural disaster, green buildings, etc., 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 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.
- 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 percent

(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 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 improvements, 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 percent (2.5%) development fee, unless otherwise exempted below.**
- b) The two and a half percent (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, 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 forty-five (45) days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Township 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 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 ninety (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 ten (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 Lawrence Township fail to determine or notify the developer of the amount of the development fee within ten (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 (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.**
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 the 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 Procedure Law, N.J.S.A. 54:48-1, et seq., within ninety (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 forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the 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 ninety (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. The Township has created a separate, interest-bearing affordable 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 the Township's affordable housing program.
- 3. The Township had previously provided COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8. The Superior Court shall now have the jurisdiction to direct the disbursement of the Township's trust funds as originally provided to COAH.
- 4. 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 Superior Court. Funds deposited in the housing trust fund may be used for any activity approved by the Superior Court to address the 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. 5:93-8.16 and specified in the approved spending plan.**
2. **Funds shall not be expended to reimburse the Township for past housing activities.**
3. **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 (1/3) 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.**
 - 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.**
 - b) **Affordability assistance to households earning thirty percent (30%) or less of median income may include buying down the cost or subsidizing the construction 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. **The 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.**
5. **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 twenty percent (20%) of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the monitoring requirements set forth in the Court-approved April 28, 2017 executed Settlement Agreement with Fair Share Housing Center. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Court's rulings are not eligible uses of the affordable housing trust fund.

I. Monitoring

1. On or about June 30 of each year through 2025, the Township 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 Intervenors and posted on the municipal website, using forms developed for this purpose by DCA, COAH, or LGS. This reporting shall include an accounting of all housing 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 Township’s housing program, as well as to the expenditure of revenues and implementation of the plan approved by the Superior Court.

J. Ongoing collection of fees

1. The ability for the Township to impose, collect and expend development fees shall expire with its Court-issued Judgment of Compliance and Repose unless the Township of Lawrence has first filed an adopted Housing Element and Fair Share Plan with the Superior Court or other appropriate jurisdiction, has filed a petition for certification or a Declaratory Judgment Action, and has received approval of its development fee ordinance from the appropriate jurisdiction.
2. If the Township fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance and Repose, 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).
3. The Township shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance and Repose, nor shall the Township retroactively impose a development fee on such a development. The Township shall not expend development fees after the expiration of its Judgment of Compliance and Repose unless the Township has first sought and obtained approval to do so from the entity that will be reviewing and approving its 2025 Housing Element and Fair Share Plan.

Section 2. Continuation. In all other respects, the Land Use Ordinance of the Township of Lawrence shall remain unchanged.

Section 3. 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 the Land Use Ordinance as a whole, or any other part thereof.

Section 4. 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 5. Enactment. This Ordinance shall take effect upon the filing thereof with the Mercer County Planning Board after final passage, adoption, and publication by the Township Clerk of the Township of Lawrence in the manner prescribed by law.

Adopted: August 28, 2018

RECORD OF VOTE

COUNCIL	AYE	NAY	PRESENT	ABSENT	ABSTAIN	MOVE	SECOND
Mr. Kownacki	X						
Ms. Lewis	X					X	
Dr. Maffei				X			
Mr. Powers	X						X
Mayor Bobbitt	X						