

## CHAPTER LIII

### MANDATORY DEVELOPMENT FEE

#### 53-1 PURPOSE.

In Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:270-301 et seq. and the State Constitution, subject to the imposition of rules by COAH. The purpose of this chapter is to establish standards for the collection, maintenance and expenditure of development fees pursuant to COAH's adopted rules. Fees collected pursuant to this chapter shall be used for the sole purpose of providing low and moderate income housing. This section shall be interpreted within the framework of COA's rules on development fees. COAH has authorized the Township to adopt this ordinance. (Ord. No. 95-22 § 1)

#### 53-2 RESIDENTIAL DEVELOPMENT FEES.

a. Residential development fees shall be imposed on developers in the amount of one and one-half (1.5%) percent of the equalized assessed value of any eligible residential activity.

b. If a "d" variance is granted pursuant to N.J.S.A. 40:55D-70d(5), then the additional residential units realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six (6%) percent rather than the development fee of one and one-half (1.5%) percent. However, if the zoning on a site has changed during the two (2) year period preceding the filing of the "d" variance application, the base density for purposes of calculating the bonus development fee shall be the highest density permitted by right during the two (2) years preceding the filing of the "d" variance application.  
(Ord. No. 95-22 § 2; Ord. No. 05-16A §§ 1, 3; Ord. No. 10-11 §1)

#### 53-3 NONRESIDENTIAL DEVELOPMENT FEES.

a. Nonresidential fees shall be imposed on developers in the amount of two and one-half (2.5%) percent of the equalized assessed value of any eligible nonresidential activity pursuant to the Statewide Non-Residential Development Fee Act, P.L. 2008 c. 46, subject to the suspension and refund provisions of the Economic Stimulus Act of 2009, P.L. 2009, c. 90.

b. If a "d" variance is granted pursuant to N.J.S.A. 40:55D-70d(4), then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six (6%) percent

rather than the development fee of two (2%) percent. However, if the zoning on a site has changed during the two (2) year period preceding the filing of the “d” variance application, the floor area for purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two (2) years preceding the filing of the “d” variance application.

The increased fees imposed by this Ordinance No. 05-16A shall apply to all developers applying for building permits on the effective date of the respective ordinance and thereafter.

(Ord. No. 95-22 § 3; Ord. No. 05-16A §§ 2, 3; Ord. No. 10-11 § 2)

#### **53-4 ELIGIBLE EXACTION, INELIGIBLE EXACTION AND EXEMPTIONS.**

a. Developers of low and moderate income units shall be exempt from paying development fees.

b. Developers of new nonresidential structures, except as excluded herein, and new residential structures shall pay a development fee in the manner prescribed herein.

c. Developers that expand an existing nonresidential structure and expand a residential structure where it results in additional dwelling units shall pay a development fee. The development fee shall be calculated based on the increase in the equalized assessed value of the improved structure.

d. Developers that have received preliminary or final approval prior to the effective date of this chapter shall be exempt from paying a development fee unless the developer seeks a substantial change in the approval.

e. Developers of any church, library, school, college, governmental facility, hospital for humans or nursing homes shall be exempt from paying a development fee.

(Ord. No. 95-22 4)

#### **53-5 COLLECTION OF FEES.**

a. Developers shall pay fifty (50%) percent of the calculated development fee to the Township of Rockaway at the issuance of building permits. The development fee shall be estimated by the Tax Assessor prior to the issuance of the building permits.

b. Developers shall pay the remaining fee to the Township of Rockaway at the issuance of certificates of occupancy. At the issuance of certificates of occupancy, the Tax Assessor shall calculate the equalized assessed value and the appropriate development fee. The developer shall be

responsible for paying the difference between the fee calculated at the certificate of occupancy and the amount paid at building permit.  
(Ord. No. 95-22 § 5)

**53-6 HOUSING TRUST FUND.**

a. There is hereby created an interest bearing housing trust fund in the Midlantic Bank for the purpose of receiving development fees from residential and nonresidential developers. All development fees paid by developers pursuant to this chapter shall be deposited in this fund. No money shall be expended from the housing trust fund unless the expenditure conforms to a spending plan approved by COAH.

b. If COAH determines that the Township of Rockaway is not in conformance with COAH's rules on development fees, COAH is authorized to direct the manner in which all development fees collected pursuant to this chapter shall be expended. Such authorization is pursuant to this chapter, COAH's rules on development fees and the written authorization from the governing body to the Midlantic Bank.  
(Ord. No. 95-22 § 6)

**53-7 USE OF FUNDS.**

a. Money deposited in a housing trust fund may be used for any activity approved by COAH for addressing the Township of Rockaway's low and moderate income housing obligation. Such activities may include, but are not necessarily limited to, housing rehabilitation, new construction, regional contribution agreements, the purchase of land for low and moderate income housing sites; assistance designed to render units to be more affordable to low and moderate income people; and administrative costs necessary to implement the Township of Rockaway's housing element. The expenditure of all money shall conform to a spending plan approved by COAH.

b. At least thirty (30%) percent of the revenues collected shall be devoted to render units more affordable. Examples of such activities include, but are not limited to, down payment assistance; low interest loans and rental assistance.

c. No more than twenty (20%) percent of the revenues collected from development fees shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement: a rehabilitation program, a new construction program, a regional contribution agreement, a housing element, and an affirmative marketing program. Administrative funds may be used for: income qualification of households, monitoring the turnover of sale and rental

units, and compliance with Council monitoring requirements. Development fees shall not be used to defray the costs of existing staff.  
(Ord. No. 95-22 § 8)

**53-8 MONITORING.**

The Township shall complete and return to the Council all monitoring forms related to the collection of development fees, expenditures of revenues and implementation of the spending plan certified by the Council. Quarterly financial reports and annual program implementation and auditing reports shall be completed by the Township on forms designed by the Council.  
(Ord. No. 95-22 § 8)

**53-9 PENALTIES.**

a. In the event that any of the conditions set forth in subsection 53-9b below occur, the Council shall be authorized, on behalf of the Township, to direct the manner in which all development fees collected pursuant to this chapter shall be expended. Should any such condition occur, such revenues shall immediately become available for expenditure at the direction of the Council upon the Township Clerk's receipt of written notification from the Council that such a condition has occurred. In furtherance of the foregoing, the township shall, in establishing a bank account pursuant to Section 53-6 of this chapter, ensure that the Township has provided whatever express written authorization which may be required by the bank to permit the Council to direct disbursement of such revenues from the account following the delivery to the bank of the aforementioned written notification provided by the Council to the Township Clerk.

b. Occurrence of the following may result in the Council taking an action pursuant to subsection 53-9a above: failure to submit a spending plan within the time limits imposed by the Council; failure to meet deadlines for information required by the Council in its review of this chapter, the Township's housing element or spending plan; failure to address the Council's conditions for approval of a plan to spend development fees within the deadlines imposed by the Council; failure to address the Council's condition for substantive certification within the deadlines imposed by the Council; failure to submit accurate monitoring reports within the time limits imposed by the Council, failure to implement the spending plan for development fees within the time limits imposed by the Council or within reasonable extensions granted by the Council; expenditure of development fees and activities not permitted by the Council; revocation of the Township's substantive certification; other good cause demonstrating that the revenues are not being used for the intended purpose.  
(Ord. No. 95-22 § 9)

