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BOROUGH OF MAYWOOD

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ORDINANCE # 5-17

"AN ORDINANCE ADDING CHAPTER 210 TO THE BOROUGH CODE ESTABLISHING A DEVELOPMENT FEE PROGRAM TO SUPPORT AFFORDABLE HOUSING"

BE IT ORDAINED BY THE BOROUGH MAYOR AND COUNCIL OF THE BOROUGH OF MAYWOOD, IN THE COUNTY OF BERGEN AND STATE OF NEW JERSEY, AS FOLLOWS:

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 promulgated 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; and

WHEREAS, 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, Section 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the purpose of providing low- and moderate-income housing consistent with a spending plan submitted to and approved by the Superior Court of New Jersey. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:93-8.1-8.22; and

WHEREAS, the purpose of this Ordinance is to create a fee collection program pursuant to the Council on Affordable Housing (COAH) and implementing regulations applicable to both non-residential development and residential development to be assessed and collected by the Borough, consistent with the rules and regulations of COAH and the Housing Element and Fair Share Plan of the Borough, to address its obligations pursuant to the Fair Housing Act and its implementing regulations as promulgated by COAH.

WHEREAS this ordinance shall not be effective until approved by the Superior Court of New Jersey pursuant to N.J.A.C. 5:93-8.2. The Borough shall not spend development fees until the Superior Court of New Jersey has approved a plan for spending such fees in conformance with N.J.A.C. 5:93-5.1(c).

NOW, THEREFORE, BE IT ORDAINED by the Borough Mayor and Council of the Borough of Maywood, County of Bergen, as follows:

Section 1: Chapter 210 shall be added to the Borough of Maywood Code and shall be entitled "DEVELOPMENT FEE PROGRAM TO SUPPORT AFFORDABLE HOUSING". Such new article shall read as follows:

Chapter 210 title: **DEVELOPMENT FEE PROGRAM TO SUPPORT
AFFORDABLE HOUSING**

§ 210-1 DEFINITIONS

The following terms, as used in this ordinance, shall have the following meanings:

"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.

"COAH" or the "Council" means the New Jersey Council on Affordable Housing established under the Fair Housing Act, which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

"Development Fee" means money paid by a developer for the improvement of property as permitted in N.J.A.C.5:93-8.

"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.

"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).

§ 210-2 RESIDENTIAL DEVELOPMENT FEES

A. Imposed fees

1. Within the Borough, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half (1.5) percent of the equalized assessed value for residential development provided no increased density is permitted.
2. 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 shall

be required to pay a development fee of six (6) percent 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 "d" variance application.

B. Eligible exactions, ineligible exactions and exemptions for 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 residential development fees.
2. Developments that have received preliminary or final site plan approval prior to the adoption of this 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 shall be vested on the date that the building permit is issued.
3. Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a residential development fee.
4. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use or is demolished and replaced with a larger structure based upon additional square footage that can be occupied 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.

§ 210-3 NON-RESIDENTIAL DEVELOPMENT FEES

A. Imposed fees

1. 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.
2. 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.

3. 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.
- B. Eligible exactions, ineligible exactions and exemptions for 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 (2.5) percent development fee, unless otherwise exempted below.
 2. The two and a half (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.
 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 the Borough as a lien against the real property of the owner.

§ 210-4 COLLECTION PROCEDURES

- A. 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 Borough's construction official responsible for the issuance of a building permit.
- B. 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.

- C. The construction official responsible for the issuance of a building permit shall notify the municipal tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- D. 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.
- E. The construction official responsible for the issuance of a final certificate of occupancy notifies the municipal assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the municipal tax 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 construction official and the developer of the amount of the fee.
- G. Should the 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 the Subsection b. of Section 37 of P.L.2008, c.46 (C.40:55D-8.6)
- H. Fifty percent of the development fee shall be collected at the time of the issuance of the building permit. The remaining portion shall be collected at the issuance of 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. No certificate of occupancy shall be issued unless and until the fee is paid to the Borough.
- I. 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 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, RS.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 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.

§ 210-5 AFFORDABLE HOUSING TRUST FUND

- A. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer or other designated municipal employee for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- B. The following additional funds shall be deposited in the Borough's Affordable 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 (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 the Borough's affordable housing program.
- C. Within seven days from the opening of the trust fund account, the Borough shall provide COAH and/or the Department of Community Affairs ("DCA") with written authorization in the form of a three-party escrow agreement between the Borough, the bank and COAH and/or DCA to permit COAH and/or DCA to direct the disbursement of the funds as provided for N.J.A.C. 5:93-8.17.
- D. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities as per a spending plan approved by order of the Superior Court of New Jersey.

§ 210-6 USE OF FUNDS

- A. The expenditure of all funds shall conform to a spending plan approved by the Superior Court of New Jersey. Funds deposited in the housing trust fund may be used for any activity approved by the Superior Court to address the 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 and market to affordable 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.

- B. Funds shall not be expended to reimburse the Borough for past housing activities.
- C. 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 Borough's 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.
 1. 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.
 2. 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 Borough's Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
 3. 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 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. 5:93-8.16(d).
 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 Borough employees or consultant fees necessary to develop or implement a new construction program, an updated 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 or the Superior Court's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to COAH's regulations and/or action are not eligible uses of the affordable housing trust fund.

§ 210-7 MONITORING

The Borough shall complete and return to COAH and/or the Superior Court 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 the Borough's housing program as well as to the expenditure of revenue and implementation of the plan that has been approved by the court. All monitoring reports shall be completed on forms designed by COAH or the special master.

§ 210-8 ONGOING COLLECTION OF FEES

The ability for the Borough to impose, collect and expend development fees shall expire with its judgment of compliance from the court unless the Borough has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification or the entry of a judgment of compliance from the court, and has received COAH's or the court's approval of its development fee ordinance. If the Borough fails to renew its ability to impose and collect development fees prior to the expiration of its 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). The Borough shall not impose a development fee on a development that receives preliminary or final site plan approval after the expiration of its 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 judgment of compliance.

Section 2: The provisions of this Ordinance are declared to be severable in nature; if any section, subsection, sentence, clause or phrase thereof for any reason is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and/or phrases in this Ordinance, but shall remain in full force and effect, it being the legislative intent of the Borough Council that this Ordinance shall withstand the invalidity of any part thereof.

Section 3: All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only, however, to the extent of such conflict or inconsistency, it being the legislative intent that all ordinances or parts of ordinances now existing or in effect, unless the same be in conflict or inconsistent with any provision of this Ordinance, shall remain in full force and effect.

Section 4: This ordinance shall take effect upon passage, publication according to law and not until approved by the Superior Court of New Jersey pursuant to N.J.A.C. 5:93-8.2.