

ORDINANCE NO. 15-05

AN ORDINANCE AMENDING, REVISING AND SUPPLEMENTING
CHAPTER 1 OF THE CODE OF THE TOWNSHIP OF WASHINGTON,
ENTITLED "GENERAL PROVISIONS", SPECIFICALLY ARTICLE I,
ENTITLED "ADMINISTRATION", SPECIFICALLY SUBSECTION
THREE.TWO ENTITLED "DEFINITIONS" AND ARTICLE II,
ENTITLED "FAIR HOUSING FEES"

WHEREAS, the Governing Body of the Township of Washington desires to properly fund its Affordable Housing Trust Fund, in order to comply with its obligations to provide New Jersey Council on Affordable Housing (COAH) mandated affordable housing; and,

WHEREAS, according to N.J.S.A. 52:27d-301 et seq., and the State Constitution, a municipality can change mandatory development fees; and,

WHEREAS, the Township of Washington has submitted this ordinance to COAH for review on May 19, 2006 at its June 14, 2006 meeting as required by N.J.S.A. 52:27d-301 et seq.

WHEREAS, the Township of Washington will be petitioning for third round substantive certification, including its Development Fee Spending Plan, as per N.J.A.C. 5:94-1 et seq.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Washington, in the County of Warren, State of New Jersey, as follows:

Section 1. Article I, Administration, section § 3-2. Definitions shall be amended by the addition:

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.

Section 2. Article II, Fair Housing Fees shall be replaced in its entirety by the following

§ 3-6. **Purpose.**

- a) 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. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's rules. 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.

§ 3-7. **Basic requirements**

- a) Washington Township shall not spend development fees until COAH has approved a plan for spending such fees and Washington Township has received third round substantive certification from COAH or a judgment of compliance.

§ 3-8. **Residential Development fees**

- a) Residential developers shall pay a fee of 1% percent of the equalized assessed value for residential development, including teardown/rebuild permits, 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 6% percent of the equalized assessed value for each additional unit that may be realized.

§ 3-9. **Non-residential Development fees**

- a) Non-residential developers shall pay a fee of 2.5% percent of the equalized assessed value for non-residential development, including teardown/rebuild permits.
- b) If an increase in floor area ratio is approved 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 6% percent of the equalized assessed value for non-residential development. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two-year period preceding the filing of the variance application.
- c) There are certain Exemptions as shown on the *State of NJ Non-residential Development Fee Certification/Exemption Form* which include the following:
 - Non-profit and Public Education uses
 - Houses of Worship
 - Non-Profit hospital relocation or improvements
 - Transit Hub
 - Public amenities such as recreational, community and senior centers
 - Commercial Farm or Use Group U buildings and structures
 - State and Government buildings
 - Approval granted prior to July 1, 2010 [37a.(1,3,5)]

§ 3-10. Eligible exactions, ineligible exactions and exemptions

- a) Affordable housing or developments shall be exempt from development fees. All other forms of new construction shall be subject to development fees.
- b) Developments that have received preliminary or final approval prior to the effective date of this ordinance shall be exempt from development fees unless the developer seeks a substantial change in the approval.

§ 3-11. Collection of fees

- a) 50% percent of the development fee will be collected at the time of issuance of a building permit. The remaining portion will be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the building permit issuance and that determined at issuance of certificate of occupancy.

§ 3-12. Contested fees

- a) Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by Washington Township. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

§ 3-13. Affordable Housing trust fund

- a) There is hereby created a separate, interest-bearing housing trust fund in the banking institution as specified in the annual Cash Management Resolution, or as amended, for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls. All development fees paid by developers pursuant to this ordinance shall be deposited into this fund. A copy of this resolution shall be filed with COAH.
- b) Within seven days from the opening of the trust fund account, Washington Township shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the banking institution as designated in the Cash Management Resolution, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:94-6.16(b).
- c) No funds shall be expended from the affordable housing trust fund unless the expenditure conforms to a spending plan approved by COAH. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

§ 3-14. Use of funds

- a) Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the municipal fair share. Such activities include, but are not limited to: new construction, assisted living, alternative living units, RCAs subject to the provisions of N.J.A.C. 5:94-4.4(d), purchase of land for affordable housing, improvement of land to be used for affordable housing, purchase of housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, or administration necessary for implementation of the Housing Element and Fair Share Plan. The expenditure of all funds shall conform to a spending plan approved by COAH.
- b) Funds shall not be expended to reimburse Washington Township for past housing activities.
- c) After subtracting development fees collected to finance an RCA, a rehabilitation program or a new construction project that are necessary to address the Washington Township affordable housing obligation, at least 30% percent of the balance remaining 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.
 1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, and rental assistance.
 11. 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 third round municipal Fair Share Plan to make them affordable to households earning 30% percent or less of median income. The use of development fees in this manner shall entitle Washington Township to bonus credits pursuant to N.J.A.C. 5:94-4.22.
 111. 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.
- d) Washington 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, in accordance with N.J.A.C. 5:94-7.
- e) No more than 20% percent of the revenues collected from development fees each year, exclusive of the fees used to fund an RCA, 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 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. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees.

§ 3-15. Monitoring

- a) Washington Township shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, and funds from the sale of units with extinguished controls, and the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH

§ 3-16. Ongoing collection of fees

- a) The ability for Washington Township to impose, collect and expend development fees shall expire with its latest substantive certification unless Washington Township 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 Washington Township fails to renew its ability to impose and collect development fees prior to the date of expiration of its latest substantive certification, it may resume the imposition and collection of development fees only by complying with the requirements of N.J.A.C. 5:94-6. Washington Township shall not impose a development fee on a development that receives preliminary or final approval after the expiration of its latest substantive certification, nor will Washington Township retroactively impose a development fee on such a development. Washington Township will not expend development fees after the expiration of its latest substantive certification.

Section 3. All ordinances or parts of ordinance which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistencies only.

Section 4. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

Section 5. This Ordinance shall take effect after final passage and publication in accordance with law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and passed by the Township Committee on the first reading at a meeting of the Township Committee of the Township of Washington, held on April 21, 2015 and will be considered for a second reading and final passage at a regular meeting of the Township Committee to be held on May 19, 2015 at 7:30 p.m. at the Municipal Building, located at 211 Route 31 North, Washington, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

Anna C. Godfrey, RMC
Township Clerk