

**TOWNSHIP OF EAST AMWELL
HUNTERDON COUNTY, NEW JERSEY**

ORDINANCE #19-19

**AN ORDINANCE OF THE TOWNSHIP OF EAST AMWELL,
COUNTY OF HUNTERDON AND STATE OF NEW JERSEY,
AMENDING CHAPTER 75, ARTICLE III OF THE CODE ENTITLED
“DEVELOPMENT FEES” TO ADDRESS THE
REQUIREMENTS OF THE FAIR HOUSING ACT (FHA) AND THE
UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC)
REGARDING COMPLIANCE WITH THE TOWNSHIP’S
AFFORDABLE HOUSING OBLIGATIONS**

WHEREAS, the Township of East Amwell has filed a Declaratory Judgment Action in the Superior Court of New Jersey, Warren County, in furtherance of the Supreme Court’s March 10, 2015, decision captioned In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (the “Supreme Court Decision”), which was assigned to the Honorable Thomas C. Miller P.J. Cv.; and

WHEREAS, the Court entered a Judgment of Compliance and Repose dated February 27, 2018 in favor of the Township setting forth certain conditions to be met; and

WHEREAS, one of those conditions was that the Township amend its Development Fee Ordinance in accordance with recommendations from the Special Master assigned to the Township’s Declaratory Judgment Action.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of East Amwell, Hunterdon County, New Jersey, that Chapter 75, Article III the Code of the Township of East Amwell entitled “Development Fees” is hereby amended as follows (Additions indicated in boldface and italics ***thus***; deletions indicated with strike-through ~~thus~~):

Sections 75-3. 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 (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.

B. Pursuant 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), COAH is 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 the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from nonresidential development.

C. *In Re Adoption of N.J.A.C. 5:96 and 5:97 by COAH, 221 N.J. 1 (2015) (“Mount Laurel IV”), the Supreme Court remanded COAH’s duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 7, 2025 are under the Court’s jurisdiction and are subject to approval by the Court.*

D.C. This article establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, §§ 8 and 32-38. Fees collected pursuant to this article shall be used for the sole purpose of providing low- and moderate-income housing. This article shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

Section 75-4 through 75-7. No change.

Section § 75-8. Affordable Housing Trust Fund.

A. No change.

B. No change.

C. ~~Within seven days from the opening of the trust fund account, the Township shall provide 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. 5:97-8.13(b).~~ ***The Township previously provided COAH with written authorization, in the form of a three-party escrow agreement between the Township, a bank, 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 jurisdiction to direct the disbursement of the Township’s trust funds.***

D. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH ***or a court of competent jurisdiction.***

Section 75-9. Use of funds.

A. The Township shall not spend development fees until COAH ***or a court of competent jurisdiction*** has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3. Thereafter, the expenditure of all funds shall conform to the spending plan approved by COAH ***or a court of competent jurisdiction.*** Funds deposited in the housing trust fund may be used for any activity

approved by COAH **or a court of competent jurisdiction** 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 nonresidential 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. 5:97-8.7 through 8.9 and specified in the approved spending plan.

B. Funds shall not be expended to reimburse the Township for past housing activities.

C. At least 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 of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% 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% 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% 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.

D. 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, in accordance with N.J.A.C. 5:96-18.

E. No more than 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 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 COAH's monitoring requirements **as set forth in the Court-approved Settlement Agreement with Fair Share Housing Center dated February 27, 2018**. 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.

Section 75-10 - Monitoring.

On or about February 27 of each year through 2025, the Township shall provide annual reporting of trust fund activity to the DCA, COAH, or NJLGS, 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. ~~The Township shall complete and return to COAH all monitoring forms included in monitoring requirements related to~~ ***This reporting shall include an accounting of all housing trust fund activity, including*** the collection of development fees from residential and nonresidential 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 ~~certified~~ ***approved*** by COAH ***or a court of competent jurisdiction***. All monitoring reports shall be completed on forms designed by COAH ***or other entity designated by the State of New Jersey***.

Section 75-11. Ongoing collection of fees.

The ability for the Township to impose, collect and expend development fees shall expire with its ~~substantive certification~~ ***Court-issued Judgment of Compliance and Repose*** unless the Township has ***(1)*** filed an adopted Housing Element and Fair Share Plan with COAH, ***a court of competent jurisdiction or other entity designated by the State of New Jersey; (2)*** has petitioned for substantive certification ***or filed a declaratory judgment action; (3)*** and has received COAH's ***or a court of competent jurisdiction's*** approval of its Development Fee Ordinance. If the Township fails to renew its ability to impose and collect development fees prior to the expiration of ~~substantive certification~~, ***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). 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 ~~substantive certification or judgment of compliance~~; 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 ~~substantive certification or judgment of compliance~~.

NUMBERING

This ordinance may be renumbered for codification purposes.

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This Ordinance shall not become effective until the Court approves the Township’s Housing Plan Element and issues a Judgement of Repeal.

ATTEST:

TOWNSHIP OF EAST AMWELL

Krista Parsons, Acting Township Clerk
Clerk

Richard Wolfe, Mayor

Introduced: _____

Motion by: _____

Second by: _____

Introduction Roll Call:

Ayes:

Nayes:

Absent:

Abstain:

Adopted: _____

Motion by: _____

Second by: _____

Adoption Roll Call:

Ayes:

Nayes:

Absent:

Abstain:

I hereby certify the foregoing to be a true copy of an Ordinance adopted by the East Amwell Township Committee at a meeting held on _____, 2018.

Terri Stahl, Township Clerk

